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IN CONVERSATION WITH:

ELIZABETH "LIZZIE" COSTABIR

Chief Executive Officer

Buy Rent Kenya

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CM ADVOCATES LLP

A Decade Of Legal Innovation

10 Years ANNIVERSARY

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CONTRIBUTORS:

Elizabeth COSTABIR, C.E.O, BuyRentKenya
Joan MAINA, Legal Researcher and Editor - CM Property Digest
Lynda MOKAYA, Senior Associate - CM Advocates LLP
Grace KIMUNYA, Senior Associate - CM Advocates LLP
Eileen CHEPKORIR, Advocate Trainee - CM Advocates LLP
Stella ORENGO, Director - Bio-Climate Solutions
Isaya LEMERKETO, Litigation clerk - CM Advocates LLP
Melissa MACHUA, Senior Associate – CM Advocates LLP
Tabitha MUCHIRI, Associate - CM Advocates LLP

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AN EXCLUSIVE INTERVIEW WITH ELIZABETH COSTABIR, C.E.O OF BUY RENT KENYA

COMPILED BY:

Joan MAINA
Advocate and Author's Editor
CM Property Digest
jmaina@cmpropertydigest.com

An exclusive interview with Elizabeth Costabir, C.E.O. at Buy Rent Kenya.

INTRODUCTION

The real estate industry is increasingly adopting digital tools and platforms. This includes online property listings, virtual tours, and digital transactions, which streamline the buying and selling process. Buy Rent Kenya is a pioneer in the market by leading the way when it comes to digitizing real estate transactions. Joined by their esteemed CEO, Elizabeth Costabir, today we find out what it takes to lead and drive digital transformation in the real estate sector.

1. **WELCOME LIZZIE. AS WE KNOW THE WORLD TODAY, TECHNOLOGY HAS PLAYED A CRUCIAL PART IN EVERY INDUSTRY AND HAS EQUALLY REVOLUTIONIZED THE REAL ESTATE MARKET. TELL US A LITTLE ABOUT BUY RENT KENYA AND ITS ROLE IN SHAPING THE MODERN REAL ESTATE LANDSCAPE?**

   Thank you for the interview and allowing me to contribute to your prestigious Magazine. Let me tell you about BuyRentKenya and its Role in Shaping the Modern Real Estate Landscape in Kenya.

BuyRentKenya is Kenya's leading and most trusted real estate marketplace, connecting property buyers, sellers, and renters with unmatched ease. With over 12 years of experience in the Kenyan market, we've pioneered the integration of advanced technology, including AI, to intelligently match clients with the right properties. Our platform hosts an average of 25,000 property listings each month, supported by a robust network of over 400 real estate professionals.

Our mission at BuyRentKenya is to revolutionize the real estate experience by making it seamless and tailored to the specific needs of our users. We are at the forefront of adopting cutting-edge technology and real estate trends to provide a transparent and efficient property search process. This includes detailed property descriptions, accurate pricing, high-quality images, floor plans, videos, and virtual tours, along with neighborhood guides. By collaborating with credible partners, we empower our clients to make informed decisions, enhancing the overall real estate experience in Kenya.

2. WITH THE REAL ESTATE SECTOR EXPERIENCING SHIFTS DUE TO DIGITAL TRANSFORMATION, CHANGING CONSUMER PREFERENCES, AND ECONOMIC FACTORS, HOW IS BUYRENTKENYA LEVERAGING ITS PLATFORM AND RESOURCES TO STAY COMPETITIVE AND MEET EMERGING DEMANDS? HOW DOES BUYRENTKENYA DIFFERENTIATE ITSELF FROM OTHER REAL ESTATE PLATFORMS IN KENYA AND EAST AFRICA?

The way BuyRentKenya leverages its platform and resources to stay competitive and meet emerging demands is based on the following:-

- **Our Market Presence and Experience:**
  BuyRentKenya stands as the only dedicated property marketplace with a physical presence in Kenya, backed by over 12 years of industry experience and 13 prestigious accolades. Our commitment to transparency and trust is reflected in our up-to-date, quality property listings, complete with price indexes, photos, videos, floor plans where provided and virtual tours. This comprehensive approach ensures that property seekers can make informed decisions, enhancing their home-buying or renting experience.

- **Constant Innovation with Comprehensive Search Features:**
  We continually innovate to enhance the user experience. Our platform allows property seekers to save searches and receive email notifications about properties that match their criteria, ensuring they never miss an opportunity. We've also introduced a free and easy-to-use online Mortgage Calculator, helping users estimate the financing they need for their desired homes.

  Additionally, we offer pre-qualification and expert financial advice for mortgage services, seamless online home insurance purchasing, and a conveyancing service,through our partners, making the entire property acquisition process stress-free.

- **Our Market Insights and Expertise:**
  We keep our audience well-informed with the latest market trends through blogs, neighborhood guides, property news, and comprehensive market research. Our participation in webinars, conferences, and expos highlight our expertise and thought leadership, providing valuable insights to both property seekers,sellers, and RE industry. This commitment to knowledge-sharing positions us as a trusted source of real estate information in Kenya.

- **Dedicated Support for Real Estate Professionals and Property Seekers:**
  For real estate professionals, we provide dedicated account managers who offer a range of advertising and marketing products, both online and offline. We also supply business intelligence reports and a powerful real estate CRM to help professionals manage listings and leads effectively.

  For property seekers, our "Request for Property" feature allows users to specify their property needs, which are then sent directly to agents specializing in those types of properties. This personalized service ensures that users find the properties that best meet their requirements.

3. WHEN WE SPEAK OF THE FUTURE OF THE KENYAN REAL ESTATE MARKET: OPPORTUNITIES AND CHALLENGES

Over the next five years, the Kenyan real estate market is poised for significant growth, driven by population expansion and a projected 35% rise in urbanization by 2030. This will increase the demand for modern housing, fueled by favorable economic conditions, supportive government policies, foreign investment, and technological advancements.

However, the market will face challenges, including regulatory changes affecting developers and property owners, currency fluctuations, and limited access to technology.

To navigate these challenges and capitalize on opportunities, BuyRentKenya is committed to continuous investment in innovative digital tools and features that cater to market needs. We're also expanding our ancillary services and fostering strong partnerships to remain agile and responsive to market dynamics. Our focus on adaptation and forward-thinking will ensure we maintain our leadership position in Kenya's real estate industry.

4. ARE THERE ANY CURRENT TRENDS SHAPING THE INDUSTRY, AND HOW IS BUYRENTKENYA STRATEGICALLY POSITIONING ITSELF TO ADAPT TO THESE EVOLVING TRENDS?

Absolutely, the real estate industry is being significantly shaped by several emerging trends. Digitally savvy middle-class Kenyans are increasingly seeking local brand experiences that match what they see regionally, continentally, and internationally, driving new demands in the market.

Key trends include the growing demand for Mixed-Use Developments that seamlessly integrate residential, commercial, and recreational spaces, optimizing land use efficiency and convenience. Additionally, there is a rising interest in Smart Homes, PropTech, and Green and Sustainable building practices, such as eco-friendly properties and homes designed with potential home offices.

At BuyRentKenya, we are strategically positioning ourselves to embrace these trends by enhancing our digital platform with more user-centric features and leveraging data analytics to deliver personalized experiences to our users. We are also focusing on incorporating smart technologies and sustainable practices into our offerings, ensuring we meet the evolving expectations of our clientele. By staying attuned to these trends, we're not only adapting but also actively driving the evolution of the real estate industry in Kenya.

5. **YOU RECENTLY LAUNCHED A NEW PRODUCT, BRK HOME CONNECT IN MAY, CAN YOU TELL US WHAT IT IS ABOUT AND WHAT ROLE IT SERVES IN TODAY'S INNOVATIVE MARKET?**

Home Connect is a new product that we launched because we saw a need in the market for our developers. Now one of our business models is a pay-to-listen model, where we got to understand from some of our developers that they're really looking for a more niche, bespoke and holistic service that encompasses not just the advertising on BRK and content creation, but also to help them with the customer management; that is to actually bring the buyers and sellers together with the product. Therefore, Home Connect was born.

Basically, we help developers find buyers and currently we're looking at the more affordable type of market where you have developments that are under 10 million and more like they're ready to move in or almost ready to be occupied. This is all because developers struggle with their marketing as well as part of their sales, because as you know, home ownership is only at 21%. So, Home Connect is trying to help all developers who want to scale and this is one way of doing it.

6. **DATA ANALYTICS PLAYS A CRUCIAL ROLE IN ENHANCING USER EXPERIENCES WITHIN APPLICATIONS. ARE THERE PARTICULAR METRICS OR INSIGHTS THAT HAVE BEEN CRUCIAL IN GUIDING YOUR STRATEGY AND IMPROVING CUSTOMER SATISFACTION? HOW DO YOU ENSURE THAT YOUR TECHNOLOGICAL ADVANCEMENTS REMAIN ALIGNED WITH THE EXPECTATIONS AND DEMANDS OF YOUR USERS?**

The power of Data Analytics definitely enhances User Experience and provides a guiding strategy, therefore, data-powered customer insights are at the heart of our strategy at BuyRentKenya. We closely monitor key metrics that provide valuable insights into user behavior, platform engagement, service utilization, and preferences. These metrics are crucial in guiding our decision-making process, allowing us to identify areas for improvement and ensure that our platform evolves in line with user needs.

To keep our technological advancements aligned with user expectations, we actively seek feedback through surveys, user testing, and direct engagement with our customers. This ongoing dialogue ensures that we understand their needs and demands, allowing us to make informed adjustments and innovations. By adopting a data-driven approach, we are committed to continuously delivering a superior user experience that meets and exceeds the expectations of our audience.

7. **IN YOUR CUSTOMER-FOCUSED APPROACH, WHAT STRATEGIES DO YOU EMPLOY TO ENSURE CUSTOMER SATISFACTION AND LOYALTY ON YOUR PLATFORM? COULD YOU ELABORATE ON THE SPECIFIC METHODS YOU USE TO ENGAGE WITH CUSTOMERS IN ORDER TO ADDRESS THEIR NEEDS EFFECTIVELY? ARE THERE PARTICULAR EXAMPLES OR PRACTICES YOU CAN SHARE THAT HIGHLIGHT THE EFFECTIVENESS OF THESE STRATEGIES IN ENHANCING THE OVERALL CUSTOMER EXPERIENCE?**

There are a couple of strategies for ensuring Customer Satisfaction and Loyalty at BuyRentKenya that we implement. Customer feedback is the cornerstone of our approach to continuously improving our services and features. We prioritize several key performance indicators (KPIs) and metrics to assess and enhance the customer experience for example:

- **Net Promoter Score (NPS):** This metric measures customer satisfaction and loyalty by asking customers how likely they are to recommend our platform. NPS is a reliable indicator of overall customer sentiment and helps us gauge the effectiveness of our efforts in building strong customer relationships.

- **Customer Satisfaction (CSAT):** We use CSAT surveys to gather immediate feedback from customers about their satisfaction with recent interactions on our platform. This allows us to quickly identify and address specific touchpoints that may require improvement.

- **Customer Effort Score (CES):** CES measures the ease with which customers can achieve their goals, such as making a purchase or resolving an issue. A

  lower effort score indicates a smoother and more user-friendly customer journey, which is critical for maintaining satisfaction.

- **Conversion Rate:** We track the percentage of visitors who complete desired actions, such as signing up for newsletters or filling out lead forms. This metric helps us gauge the effectiveness of our website in guiding users toward their goals and ensuring a seamless experience.

An typical Engagement Strategies and Practical Example was:

To effectively address customer needs, we engage with our users through multiple channels, including monthly surveys, user testing, and direct communication. This active engagement allows us to understand our strengths and identify areas for improvement. For instance, based on feedback from real estate agents, we introduced an enhanced CRM system with built-in lead and listing management features, specifically designed to meet the needs of the agents who are the ultimate users of the CRM.

Additionally, in response to property seekers' feedback, we integrated ancillary services such as financial solutions, including a mortgage calculator, which assists users in applying for mortgages and calculating repayments. These enhancements are a direct result of listening to our users and incorporating their feedback into our platform.

By actively involving our customers in the development process and making data-driven decisions, we ensure that BuyRentKenya remains responsive to the needs of both property seekers and sellers, continuously improving our platform to better serve our users.

8. WHAT ROLE DO PARTNERSHIPS AND COLLABORATIONS PLAY IN YOUR BUSINESS STRATEGY? IS THERE A WAY BUYRENTKENYA LIAISES WITH LOCAL DEVELOPERS AND REAL ESTATE AGENTS TO ENSURE A DIVERSE AND COMPREHENSIVE PROPERTY LISTING?

Our role of partnerships and collaborations in BuyRentKenya's Business Strategy is a fundamental component of our business strategy. We work closely with local developers, real estate agents, and ancillary partners to ensure our platform offers a diverse and comprehensive range of property products and services. These collaborations enable us to provide the latest property listings and developments, alongside additional services such as mortgage solutions, conveyancing, and home insurance.

By creating a one-stop-shop experience, we make it easier for our users to find, finance, and secure their ideal properties. Fostering strong relationships with our partners allows us to maintain a dynamic and up-to-date platform, ensuring that BuyRentKenya remains the most trusted and complete resource for property seekers in Kenya.

9. AS BUYRENTKENYA AND CM ADVOCATES HAVE BECOME BUSINESS PARTNERS, HOW DOES THIS ALLIANCE ENHANCE AND ALIGN WITH YOUR FIRM'S STRATEGIC GOALS AND OBJECTIVES?

So we're very, very excited first of all to partner with CM Advocates and congratulations once again on the achievement of your 10-year anniversary. It was a fantastic achievement by the founders of CM Advocates.

We're excited to partner with CM Advocates for one reason and that is we want to have a one-stop shop, so to speak, or one-stop ecosystem within BRK. So if you're looking for property to buy, rent or sell, you come to BuyRentKenya and then when you need conveyancing services especially first-time buyers, you tend to also want your own lawyer because not everyone will go with banks. Therefore, this is where we see the need of bringing ancillary services because people are looking for platforms that have innovative products and services. This is where we have a plug-and-play with CM Advocates and connect our property seekers with your firm's services. Audiences at CM Advocates that want to dispose property or look for property. We can match them with property listings on BRK or even those that we're signing developer contracts with.

Additionally, we offer legal services and advice to a range of clients, including real estate agents, private sellers, developers, and partners like banks and home insurance providers. This partnership facilitates introductions between our clients and your firm, creating mutual benefit.

10. WHAT ARE SOME OF THE BIGGEST CHALLENGES YOU HAVE FACED AS THE CEO OF BUYRENTKENYA, AND HOW HAVE YOU OVERCOME THEM? ADDITIONALLY, HOW DO YOU ENSURE YOUR TEAM IS MOTIVATED AND ALIGNED WITH THE COMPANY'S GOALS?

Most if not all CEO's face business challenges and it's more about how we can overcome them; To share a few learnings at BuyRentKenya:

- One of the biggest challenges we've faced is the **lack of trust and transparency** in the market. This is a daily reality for many Kenyans, compounded by a lack of legacy infrastructure. However, Kenya's market is ripe for disruption, especially with the rise of digital platforms. We've tackled this by building a trusted digital marketplace that connects Kenyans with homes, promoting transparency and reliability.

- Another challenge is **limited access to technology** and internet infrastructure in certain areas, which can make it difficult for potential customers to access our platform. To address this, we've focused on optimizing our platform for accessibility with a mobile first approach and are continuously working on expanding our reach to underserved areas via our RE Agents.

- There's also a **limited understanding of online property marketplaces** versus traditional real estate agencies. Many potential buyers and renters in Kenya may be unfamiliar with how to navigate an online marketplace, often turning to social media channels like WhatsApp, Facebook, or Instagram, where they sometimes encounter fraud. To combat this, we invest in user education and awareness campaigns to help people understand how to use our platform safely and effectively.

- **Regulatory changes** present another significant challenge. New taxes and regulations affecting developers and property owners can impact spending power, investment, and access to credit, potentially leading to an increase in non-performing loans. We stay agile by closely monitoring regulatory shifts and adjusting our strategies accordingly.

- *Finally*, **currency fluctuations**, particularly the weakening of the Kenyan Shilling, have affected local investors and construction costs, leading to higher property prices or pricing in USD. We mitigate this by offering financial advice and tools, like our mortgage calculator, to help users navigate these challenges.

- **Ensuring Team Motivation and Alignment** : To keep our team motivated and aligned with the company's goals, we focus on clear communication, regular goal-setting, and fostering a collaborative culture. We ensure that everyone understands how their role contributes to the broader mission of the company and its values. We also invest in continuous learning and development opportunities, encouraging our team to grow alongside the company. Regular check-ins and feedback sessions help us stay connected and ensure that everyone is working towards the same objectives.

11. WHAT OPPORTUNITIES DO YOU SEE FOR GROWTH AND EXPANSION, BOTH WITHIN KENYA AND POTENTIALLY IN OTHER AFRICAN MARKETS? CAN YOU ELABORATE ON THE SPECIFIC STRATEGIES YOU PLAN TO EMPLOY TO CAPITALIZE ON THESE OPPORTUNITIES?

- **Opportunities for Growth and Expansion in Kenya and Beyond:**
  Kenya stands out as a prime market for real estate growth in the region due to its relative economic stability and a well-developed financial sector. Despite a 20% devaluation of its currency post-COVID, Kenya's economy remains robust, especially compared to other African economies like Nigeria. As the economy recovers, driven by investor confidence, expatriate community, and tourism, the residential sector is poised for significant growth.

- **Middle-Class Growth and Modern Housing Preferences**
  Kenya's expanding middle class has led to a rising demand for both buying and renting properties. This demographic shift is accompanied by changing housing preferences, with an increasing appetite for modern housing designs such as mixed-use developments and properties focused on sustainability and energy efficiency. As Environmental, Social, and Governance (ESG) concerns gain global prominence, we anticipate a surge in capital flows toward green-rated buildings. Additionally, co-living spaces and furnished apartments are becoming mainstream, particularly among both locals and expatriates, offering new avenues for growth.

- **Urbanization and Population Growth**
  Urbanization is a mega trend across Africa and Kenya is no exception. Kenya's population is projected to grow from 55 million to 85 million by 2050, with urbanization expected to rise to 35%.

This, aligned with the Kenyan government's "Big Four" Agenda and Vision 2030, highlights a significant opportunity in the real estate sector, particularly in addressing the 2 million-unit housing deficit and bridging the gap in homeownership, which currently stands at only 21%.

- **Bridging the Market Gap with Online Portals**
  There is a significant market gap in providing accurate, up-to-date, and transparent property information. Online portals like BuyRentKenya are essential in democratizing the real estate market by filling this gap. We offer a platform that ensures both buyers and sellers have access to reliable information, making the property search process more efficient and trustworthy.

- **Digital Disruption and Increasing Internet Penetration**
  Internet penetration in Kenya, currently at 42%, coupled with a rapid growth in smartphone connections at 119% per quarter, has made online real estate searches more accessible. With one in every two Kenyans possessing at least two to three SIM cards, we've prioritized a mobile-first approach to cater to this growing digital audience. The increased online presence of businesses, alongside recent advancements in fiber optic connectivity, positions Kenya—and Africa as a whole—to leapfrog other regions in establishing world-class network infrastructure.

- **Supply Gap and Technological Adoption**
  Africa remains underserved in data center provision, presenting clear opportunities for the development of both retail and wholesale colocation, as well as built-to-suit hyperscale data centers in tier-one markets. This is vital to meet the increasing and complex demand at both individual and state levels.

  Cloud-based service providers, such as Microsoft and Google, are increasingly seeking proximity to population centers to deliver sophisticated services more efficiently and reduce transit costs.

  The adoption of AI and other technologies can significantly improve user experiences, streamline processes, and enhance service offerings. Since 2019, there's been a 50% compound annual growth rate (CAGR) in online property seekers, a trend that accelerated during the pandemic. This shift underscores the importance of technological innovation in the real estate sector.

- **Data and Business Intelligence**
  Access to data and insights is crucial for informed decision-making in real estate. BuyRentKenya leverages this through various channels, including blogs, webinars, forums, panel discussions, and offline activities like Open Days, to provide thought leadership and valuable information to both buyers and sellers.

- **Regulatory and Foreign Investment Opportunities**
  Nairobi County's new regulation allows construction of up to 25 floors, effectively doubling available apartments for sale in Nairobi, creating more investment opportunities and helping to streamline the real estate market.

  Additionally, as the Estate Agent Board increases regulation, to help curb conmanship, the market will become more transparent. The weaker Kenyan shilling also presents an attractive opportunity for foreign investment, particularly from the diaspora, looking to invest in real estate.

12. WHAT CHALLENGES DO YOU ANTICIPATE ENCOUNTERING IN THESE TARGETED MARKETS, AND HOW DO YOU INTEND TO ADDRESS THEM? THE KENYAN MARKET AND AFRICA AT LARGE HAVE AN EVOLVING ECONOMIC AND REGULATORY LANDSCAPE, DOES BUYRENTKENYA'S APPROACH ALIGN TO THESE CHANGING LANDSCAPES?

Anticipated challenges and alignment with evolving economic and regulatory landscapes, in both Kenya and African Markets impacting growth in Real Estate is as follows:

- **Regulatory Changes:** The introduction of new taxes and regulations affecting developers, property owners, and the broader market poses significant challenges. These changes can influence spending power, investment levels, access to credit, and could lead to an increase in non-performing loans; there are Data Protection local and international laws to abide by and in some countries no legislation around this, hence BuyRentKenya, as an entity that is privy to data we ensure that we are fully compliant.

- **To navigate these challenges,** we actively participate with industry associations, such as the Kenya Property Developers Association (KPDA) and the Estate Agent Board of Kenya, E-Commerce events and alike; By engaging with these bodies, we ensure that we have a voice in policy discussions and can influence decisions that affect the industry. Our flexible approach allows us to adapt to the evolving economic and regulatory landscapes, ensuring that we remain aligned with changes across Africa while continuing to deliver value and transparency to our users.

- **Currency Fluctuation:** The weakening of the Kenyan Shilling in recent years has had a direct impact on local investors and construction costs, leading to higher property prices. This volatility presents a challenge for maintaining affordability and stability in the market.

Our Long-Term Vision for BuyRentKenya, as the real estate landscape evolves, is ensuring BuyRentKenya is committed to remaining at the forefront of innovation and adaptation. Our long-term vision is anchored in several key areas:

1. **Continuous Investment in Technology:** Recognizing the pivotal role technology plays in enhancing user experience and maintaining our competitive edge, we plan to invest heavily in advancements such as AI, data analytics, and mobile optimization over the next five to ten years. These investments will enable us to deliver cutting-edge products and services that align with the ever-changing needs of our users.
2. **Staying Agile and Adaptable:** The e-commerce industry is dynamic, with consumer preferences and market trends shifting rapidly. We are committed to maintaining agility and adaptability in our business model, product offerings, and strategies. By staying responsive to market feedback and emerging trends, we can continuously refine and enhance our platform to better serve our users.
3. **Enhancing Transparency and Market Democratization:** Our goal is to solidify BuyRentKenya's position as the leading real estate marketplace in Kenya. We aim to increase transparency in property transactions and democratize market structures, ensuring that homebuyers and renters have access to the information they need to make informed decisions.
4. **Expanding Our Services:** In the next five to ten years, we envision expanding our range of services to cover every aspect of the property journey. This includes comprehensive support for buying, selling, and renting properties, as well as offering ancillary services such as financing, insurance, legal advisory, and property management. Our vision is to establish BuyRentKenya as a one-stop platform that simplifies the property search process and supports our users at every stage of their real estate journey.

   By focusing on these goals, we aim to enhance user experience, increase market transparency, and maintain our leadership in the real estate industry.

13. AS A KEY FIGURE IN THE REAL ESTATE MARKET, WHAT NOTABLE INSIGHT WOULD YOU LIKE TO SHARE WITH THE REAL ESTATE FRATERNITY?

Key Insight I leave you with, is Urbanization in Kenya is accelerating, with a 35% increase expected by 2030, outpacing current housing developments, especially in high-demand segments like townhouses and apartments.

Additionally, we're witnessing a significant shift from urban centers to satellite towns, driven by the need for more space, affordability, and an improved quality of life. Satellite towns like Kitengela, Rongai, Ngong, Ruiru, and Athi River are becoming increasingly attractive to homebuyers.

My Call to Action is as one in the real estate fraternity, we must not only acknowledge these trends but also proactively innovate to meet the evolving needs of the market. The future belongs to those who can anticipate these shifts and turn them into opportunities for growth. Let's lead the charge in shaping the next chapter of urban development in Kenya.

Contributor Information

- **CEO of BuyRentKenya:** Elizabeth 'Lizzie' Costabir has been spearheading the transformation of Kenya's real estate landscape since being appointed as CEO in 2017, driving BuyRentKenya to become a market leader, focusing on innovation and excellence in the property sector.

- **Trailblazing Expertise:** From Marketing Manager to CEO, Lizzie's journey exemplifies unmatched business acumen and strategic foresight as she continues to lead BuyRentKenya to the forefront of the industry.

- **Industry Luminary:** She is also a featured speaker at premier events including the East Africa Property Investment Summit, ECOM Africa Expo, The Annual CEOs Breakfast in Nairobi, The Luxury Living and Design Expo, and more, shaping industry discourse with profound insights.

- **Media Maven:** Lizzie is a recognized voice in real estate and digital trends, leveraging platforms like Nation and BuyRentKenya to disseminate cutting-edge perspectives.

- **Champion of Empowerment:** She has been honored with the Top 25 Women in Digital Award (2018), Top 10 RE CEOs in Kenya (Valuable Brands) while also actively advancing women's empowerment in the real estate sector through initiatives like WIRE (Women in Real Estate).

With Elizabeth at the helm, BuyRentKenya sets the standard for innovation, integrity, and excellence in Kenya's property market.

IN CONVERSATION WITH:

ELIZABETH "LIZZIE" COSTABIR

Chief Executive Officer

Buy Rent Kenya

CM Advocates LLP, BRK Connect Legal Partners

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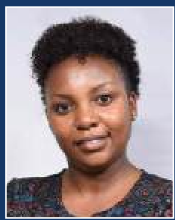
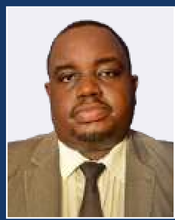
The Real Estate, Banking & Finance Team

Caroline Kamau-Kimoita
Partner and Business Unit Head
ckamau-kimoita@cmadvocates.com



Jane Mugo
Partner
jmugo@cmadvocates.com

Anna K. Wanjohi
Senior Associate
awanjohi@cmadvocates.com



Joram W. Wang'ombe
Senior Associate
jwangombe@cmadvocates.com

Diana Nderitu
Senior Associate
dnderitu@cmadvocates.com

Lynda Mokaya
Senior Associate
lmokaya@cmadvocates.com

Stella Njagi
Senior Associate
snjagi@cmadvocates.com

Grace Kimynya
Senior Associate
gkimunya@cmadvocates.com

Lydiah Oludo
Associate
loludo@cmadvocates.com

Mercy Kirui
Associate
mkirui@cmadvocates.com

Ivy Njuguna
Associate
injuguna@cmadvocates.com

Joyce Mwaura
Associate
jmwaura@cmadvocates.com

Hassan Mahmoud
Associate
hmahmoud@cmadvocates.com

Maryanne Wambugu
Associate
mwambugu@cmadvocates.com

Anne Njoroge
Legal Clerk
anjoroge@cmadvocates.com

Brian Chege
Legal Clerk
bchege@cmadvocates.com

Victor Makokha
Conveyancing Clerk
vmakokha@cmadvocates.com

Paul Oduor
Conveyancing Clerk
poduor@cmadvocates.com

CM ADVOCATES LLP

A Decade Of Legal Innovation

10 Years ANNIVERSARY

REAL ESTATE JOINT VENTURE (JV) DEVELOPMENTS IN KENYA: A COMPREHENSIVE GUIDE

Lynda MOKAYA
Senior Associate
CM Advocates LLP
lmokaya@cmadvocates.com

Joyce MWAURA
Associate Advocate
CM Advocates LLP
jmwaura@cmadvocates.com

INTRODUCTION

Borrowing costs have remained high and unpredictable. Concurrently, the property prices in major cities have surged significantly over the past few years. These factors along with others are increasingly challenging for both landowners and property developers looking to initiate real estate projects. For instance, due to soaring land prices, developers who purchase land may lack sufficient funds to develop it afterward. Similarly, landowners face obstacles in securing affordable capital for property development.

To address these challenges, it is advisable for landowners and real estate developers to collaborate and pool their resources. Joint venture projects are emerging as the future of real estate development considering recent trends. Successful real estate joint ventures hinge on carefully considering key features of such arrangements and engaging a competent lawyer to draft necessary documents that protect all parties' interests and address concerns.

For landowners, the primary hurdle often lies in negotiating favorable deals and navigating unfamiliar joint venture structures amidst concerns about potential exploitation by unscrupulous developers. On the other hand, real estate developers are keen on securing clean titles to minimize risk and ensure the freedom to market and sell units without undue interference once the project commences.

Given these considerations, a well-drafted joint venture agreement that adequately addresses the interests and concerns of all parties involved is essential.

This article provides an in-depth look at the key features of real estate JV developments in Kenya, including considerations for landowners and developers

SALIENT FEATURES FOR LAND OWNERS AND DEVELOPERS IN A REAL ESTATE JOINT VENTURES:

When entering a real estate joint venture, both landowners and developers need to consider several salient features to ensure the partnership is successful. Below are key aspects to keep in mind:

1. **Structure of the Joint Venture:** The landowner and developer need to decide on the appropriate legal structure for the JV. A JV can take the legal form of either a Partnership, a Limited Liability Company (LLC) or a Limited Liability Partnership. This affects liability, taxation and management control.

2. **Transfer of Title to the SPV:** It is advisable that property be transferred to a SPV company with the landowner and their family members as the sole shareholders and directors until the developer makes a financial investment in the project. This SPV company will serve as the vehicle for implementing the project.

3. **Share Capital and Management** of the Development Company: The initial share capital of the company should be based on the land's value, as determined by the project valuer, typically reflecting the market value. This value belongs exclusively to the landowner. The project quantity surveyor should estimate the total costs of the proposed project, and the corresponding portion of the share capital should be allocated to the real estate developer at various stages of project implementation.

4. **Selection of Consultants:** It is advisable for the parties to mutually agree on the relevant consultants for the project. These should include the project architect, contractors, quantity surveyors, structural engineers, physical planners, valuers, accountants, and legal advisors. The party responsible for consultants' fees and the terms of engagement should also be agreed upon.

5. **Decision-Making and Party Representatives:** The parties should establish decision-making procedures for their joint venture. Day-to-day management may be delegated to the project manager or architect, with at least two representatives—one from the developers and one from the landowner—overseeing the process. Major decisions should be addressed in stakeholder meetings, held monthly or quarterly.

6. **Project Type and Quality of Finishes:** Both parties, being equally invested in the project, should jointly decide on the type of development with the guidance of the project architect. This decision will be influenced by zoning regulations, permitted land use, and cost implications. The agreed and approved project plans should be registered with the lands office and attached to the joint venture agreement. The parties should also agree on the quality of finishes, which can be detailed in a schedule attached to the agreement.

7. **Roles and Responsibilities:** The JV should clearly outline the roles and responsibilities of each party in the project as well as the consequences of default.

8. **Sharing of Profits:** The primary aim for JVs is to generate profits. There should be clear cut lines on how profit will be shared amongst the parties. The parties may agree to share profits after accounting for all project costs, including reimbursing the landowner for the land's value. Alternatively, they may opt to divide the developed units proportionate to their respective contributions or as otherwise agreed.

9. **Regulatory Compliance Requirements:** Before commencement of the JV, the developer should secure all the necessary permits and approvals from the relevant authorities for the execution of the project. This includes change of user extension of lease, building approvals, and environmental impact assessments. The required permits or approvals will depend on the type of development the parties intend to implement.

10. **Tax Implications:** Compliance with tax laws is crucial to avoid significant financial penalties that could erode the project's expected profits or value. The parties should adhere to all tax requirements, including withholding tax on consultants' fees and corporate tax on profits.

11. **Project Timeline:** The parties should agree on key timelines, including the hiring of consultants, the groundbreaking date, construction phases, and the expected project completion date. The project manager, architect, and contractors can assist in developing practical timelines. Compensation mechanisms should be outlined in the event of inordinate delays.

12. **Exit Strategy and Termination of the JV:** Determine conditions under which the joint venture can be terminated, such as failure to meet deadlines, financial issues, or breach of agreement. Outline the process for the distribution of assets, repayment of investments, and resolution of outstanding liabilities upon termination. Include provisions for buy-out options, where one party can purchase the other's interest under specified conditions.

13. **Project Financing:** In some joint ventures, the developer may finance the development costs independently or through off-plan sales, possibly using savings or external financing. If the developer seeks to borrow funds using the landowner's property as collateral, this should be mutually agreed upon, as it could expose the property to the risk of attachment or forced sale in case of project failure or insufficient cash flow to repay the loan.

14. **Dispute Resolution:** Parties should establish a clear dispute resolution mechanism, whether through mediation, arbitration, or litigation to handle conflicts that may arise during the JV implementation. The joint venture agreement should clearly state the governing law for the JV agreement, typically Kenyan law, to avoid jurisdictional issues.

15. **Shareholders' Agreement:** The parties should agree on project management issues within the development company and consider executing a shareholders' agreement. This agreement should cover matters such as the appointment of the company chairperson, directors, and management structure; decision-making processes; meeting protocols; reserved matters requiring unanimous or special majority votes; dividend policies; bookkeeping and auditing; and dispute resolution mechanisms. The agreement should also include pre-emption rights on share transfers and methods for admitting new shareholders if needed.

16. **Contingency Planning**

    Force Majeure: The joint venture agreement should include provisions for unforeseen events like natural disasters, political instability or economic downturns or events that are beyond the control of the parties and how these will be managed.

    Insurance: To mitigate various risks parties should ensure adequate insurance coverage for the project throughout the implementation phase.

CHOOSING THE RIGHT JOINT VENTURE VEHICLE

Choosing the appropriate structure for a real estate joint venture (JV) in Kenya involves considering factors such as liability protection, tax implications, capital raising needs, management preferences, and the complexity of the arrangement. Consulting with a legal expert can provide tailored advice based on the specifics of your real estate joint venture.

A Limited Liability Company (LLC) is popular in Kenya, governed by the Companies Act, 2015, and allows the creation of a new company to hold real estate assets. LLCs offer liability protection to shareholders, credibility with investors and the ability to own property, sue and be sued in its own name and enter contracts. However, they face double taxation and rigorous regulatory requirements.

A Limited Liability Partnership (LLP) combines partnership flexibility with corporate liability protection allowing partners to agree on profit distribution and management while enjoying limited liability. LLPs are typically taxed at the individual level but still have regulatory requirements and may face challenges in raising capital.

General and Limited Partnerships, governed by the Partnership Act of 2012, offer flexibility, minimal regulatory requirements, and privacy. However, general partnerships expose members to unlimited liability, while limited partnerships restrict management involvement for limited partners. Both structures may struggle with raising finance and require new arrangements if the JV parties' change.

Contractual development agreements provide flexibility for short-term or strategic alliances without creating a separate entity. JV parties retain ownership of their assets and are taxed directly. However, this structure may lack clear identity, carry the risk of unlimited liability, and face difficulties in securing external financing

WHAT DUE DILIGENCE SHOULD BE CONDUCTED IN REAL ESTATE JOINT VENTURES?

Before entering a real estate Joint Venture Agreement, it's essential that landowners and developers should conduct thorough due diligence to ensure that the partnership is sound and the investment is viable. Here are some key steps to consider:

1. **Legal and Regulatory Compliance**

    - Verify the registration and ownership details of all parties involved. Ensure that the companies or individuals are legally registered and in good standing with the relevant authorities, such as the Registrar of Companies in Kenya.

    - Ensure that the JV complies with Kenyan laws and regulations related to land ownership, zoning, and land use. Review the relevant statutes, such as the Land Act, the National Land Commission Act, and the Physical Planning Act.

2. **Land Verification**

    - Verify the authenticity of titles for the property in question. Check for any encumbrances, disputes or claims against the property.

    - The developer shall be expected to carry out through due diligence over the land where the project shall be erected for purposes of establishing that the title for the land is clean, unencumbered and that no easements or way leaves have been issued to third parties which might have an impact on the proposed development. Successful due diligence by the developer shall be a condition precedent to the enforceability and validity of the joint venture agreement.

    - Review zoning laws and land use regulations to ensure the intended use of the property is permissible.

    - Conduct environmental impact assessments and land surveys to identify any potential issues or restrictions.

3. **Financial Due Diligence**

    - Review the financial statements of all parties involved to assess their financial health and stability.

    - Verify the source of funds for the investment and ensure that all financial contributions are documented and legally compliant.

    - Check for any outstanding tax liabilities or issues related to the property or the parties involved.

4. **Background Checks**

    - Research the background and reputation of all parties involved in the JV. Look into their previous projects and any history of disputes or legal issues.

    - Seek references from past partners or clients to gauge the reliability and professionalism.

   Thorough due diligence will help mitigate risks and ensure a successful and legally sound real estate joint venture in Kenya.

EXIT STRATEGIES IN REAL ESTATE JOINT VENTURES

Exit strategies in real estate joint ventures (JVs) are critical to ensure that partners have a clear understanding of how and when they can exit the partnership. In Kenya, these strategies can vary depending on the nature of the project, the market conditions and the agreement between the parties. Below are some common exit strategies used in real estate joint ventures in Kenya:

1. Sale of the Property

This is one of the most common exit strategies where the joint venture partners agree to sell the developed property at the end of the project. The proceeds from the sale are then distributed among the partners based on the agreed-upon ownership structure.

Market timing is crucial to maximize returns. Proper valuation is necessary to ensure a fair sale price. Tax implications need to be considered.

2. Buyout of One Partner

One partner may choose to buy out the other partner(s). This is common when one partner wants to exit upon default, while the other prefers to continue holding the property or managing the development.

The buyout price should be determined by an independent valuation. The terms of the buyout should be clearly defined in the JV agreement. The remaining partner(s) must have the financial capacity to complete the buyout.

3. Transfer of Ownership Shares

Partners can agree to transfer their ownership shares to a third party, allowing them to exit without selling the property.

The new partner must be vetted to ensure alignment with the JV's goals. The transfer process should comply with legal and regulatory requirements. The existing JV agreement should allow for such a transfer.

4. Winding Up of the JV

The JV can be wound up, with all assets liquidated and proceeds distributed among the partners. This is usually a last resort when the JV has fulfilled its purpose or if the partners cannot agree on another exit strategy.

Legal and regulatory processes for winding up should be followed. All liabilities must be settled before distribution of proceeds. This strategy may be time-consuming and complex.

5. Refinancing

The joint venture refinances its debt, allowing one or more partners to exit by taking on new financing that buys out their stake. This option can provide liquidity without requiring the sale of the property. However, this option increases the debt burden on the remaining partner(s) and might affect cash flows.

CAN A JOINT VENTURE BE TERMINATED PREMATURELY AND WHAT ARE THE IMPLICATIONS?

Yes, a joint venture (JV) can be terminated prematurely and this can have various implications depending on the terms of the joint venture agreement and the circumstances of the termination. The Joint Venture Agreement usually includes provisions for early termination. These clauses outline the conditions under which the JV can be terminated and the process for doing so.

Common reasons for premature termination and their implications might include:

1. **Mutual Agreement:** All parties involved may agree to end the venture early for various reasons, including changing business strategies or market conditions. If all parties agree to terminate the JV, the process is typically outlined in the Joint Venture Agreement. This often involves a formal process where the parties negotiate terms, including the division of assets, handling of liabilities, and other financial considerations. The termination can be smoother if the Joint Venture Agreement includes detailed provisions for ending the JV.

2. **Force Majeure:** Force majeure refers to unforeseeable events that prevent one or more parties from fulfilling their obligations. If such an event occurs, the JV agreement may have a clause that allows for termination or suspension of the JV. The parties would typically need to assess the impact of the force majeure event, possibly renegotiate terms, and address how to handle any remaining assets or liabilities.

3. **Insolvency:** If one of the JV partners becomes insolvent, it can significantly impact the joint venture. The insolvency might lead to the termination of the JV, especially if it affects the ability of the insolvent party to meet its obligations. The joint venture agreement should outline the procedures for dealing with insolvency, which may include buyout provisions or dissolution clauses.

4. **Breach of Contract:** A breach of contract by one party can lead to the termination of the JV, depending on the severity and terms specified in the agreement. The non-breaching party may have the right to terminate the JV and seek damages. The agreement should define what constitutes a breach and the remedies available, including termination procedures and compensation for any losses incurred.

BENEFITS OF A REAL ESTATE JOINT VENTURES

With their promising investment prospects real estate joint ventures offer the following benefits;

- **Resource pooling:** JVs enable parties to combine their resources, thereby reducing the financial burden on each individual party. The pooled resources typically include land, capital, skills and expertise. This collaborative approach allows for the development of larger and more diverse projects.

- **Risk mitigation:** By distributing the risks associated with real estate developments such as financial and operational risks, JVs reduce the risk for each party involved and creates a more balanced risk profile.

- **Access to expertise:** JVs offer parties the opportunity to access specialized expertise. Landowners, in particular, benefit by accessing development expertise such as project planning, construction management, marketing and sales, thus ensuring higher quality and efficient project execution.

- **Optimized land use:** JVs maximize the potential of the land through development. Not only does it create high-value projects but also yields a greater return on investment for all contributing parties.

DRAWBACKS OF REAL ESTATE JOINT VENTURES

Real estate joint ventures, while offering potential benefits, also come with several significant drawbacks. One of the primary concerns is the political and economic instability in regions like Kenya, where fluctuations in policy, inflation, and economic conditions can impact the viability of real estate investments. Financial risks are also a key issue, as the failure of one partner to meet financial commitments can jeopardize the entire project. Additionally, management and control disputes can emerge, causing conflicts over decision-making and project management.

Market risks further complicate these ventures, as real estate markets are often unpredictable, with shifts in economic conditions, demand, and competition affecting success. Legal and contractual challenges are another potential pitfall; poorly drafted contracts or legal disputes can lead to significant complications. Thorough due diligence is crucial, yet difficult to ensure, requiring careful investigation to confirm the trustworthiness of partners and the accuracy of property and market representations. Finally, misaligned goals and objectives among partners can lead to disputes over visions, strategies, and profit distribution, straining the partnership.

CONCLUSION

In conclusion, navigating the complexities of real estate joint ventures in Kenya demands meticulous planning, clear communication and robust legal frameworks. By embracing collaborative models and addressing key considerations such as legal structure, project management and risk mitigation strategies, landowners and developers can harness shared resources and expertise to unlock new opportunities in a dynamic market. As the landscape evolves, strategic partnerships will continue to define the future of real estate development ensuring sustainable growth and resilience against prevailing economic challenges.

In our next article, we will explore the tax considerations in real estate development joint ventures in-depth. Stay tuned!

DISPUTE RESOLUTION MECHANISMS IN SHARED PROPERTIES

Grace KIMUNYA
Senior Associate
CM Advocates LLP
gkimunya@cmadvocates.com

Joan MAINA
Advocate and Author's Editor
CM Property Digest
jmaina@cmpropertydigest.com

Eileen CHEPKORIR
Trainee Advocate
CM Advocates LLP
echepkorir@cmadvocates.com

Imagine living in your apartment, only to have a neighbour constantly blasting loud music in the middle of the night. Or consider the frustration of another neighbour who repeatedly parks in your designated spot without permission. These scenarios highlight common disputes in properties with shared spaces, costs and infrastructures. This article delves into the options available for resolving such conflicts, focusing on the avenues provided by the Sectional Properties Act, 2020 (the Act).

INTERNAL DISPUTES RESOLUTION

At the point of registering sectional plans, a corporation consisting of the unit holders is usually established. One of the duties of such a corporation is to constitute an **Internal Dispute Resolution Committee** (the Committee) on a need basis to hear and determine disputes.

This is a departure from the Repealed Act that required certain disputes and proceedings to be referred to the tribunal appointed under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act.

The Internal Dispute Resolution Committee elects members every annual general meeting which comprise of not less than three members and not more than five members of the Corporation.

The unit owners may also provide additional dispute resolution mechanism among the owners through provisions of the rules and regulations. These rules supplement the conflict resolutions mechanisms provided by the by-laws, through mediation or reconciliation by the appointed management agents.

THE PROCESS

The first step is to lodge a complaint before the Committee specifying the by-laws that have been contravened by the owner. The Committee after receiving notification of a dispute from an aggrieved party, at any time and with sufficient notice, summons parties to the dispute to appear before the Committee, at such place and time as shall be specified in the summons. The Committee issues a written notice of not less than seven days when such summons is given.

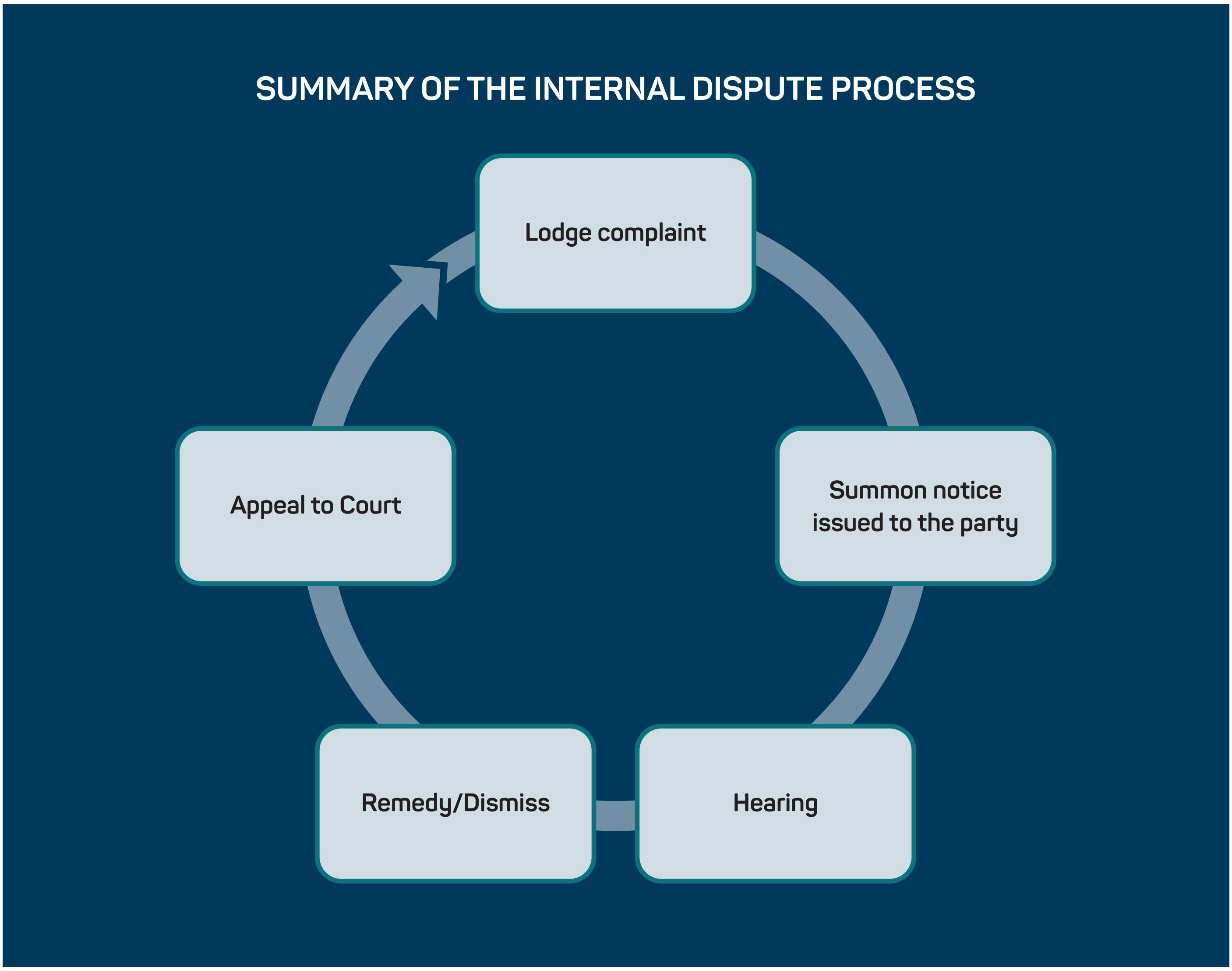
Where a party fails to appear after being summoned, the Committee proceeds to determine the matter and give its verdict. On hearing a dispute referred to it, the Committee determines the dispute and make a finding and order which is in writing and signed by the members of the Committee.

The decisions the Committee can make include:-

- Dismissing the Complaint; or

- Pronounce a remedy or a penalty to ensure compliance with the by-laws and in either case may make such award as to costs as seems appropriate in the circumstances.

A party that is dissatisfied by the decision rendered by the Committee is allowed to prefer an appeal to the Environment and Land Court. Consequently, in the event of non-compliance with an order of a Committee the aggrieved party may apply to the Court to enforce the order of the Committee.



CONCLUSION

Navigating disputes among the shared properties owners can be challenging, but with a clear and structured process for dispute resolutions ease the process.

By establishing an Internal Dispute Resolution Committee, unit owners have a practical and accessible avenue to address conflicts effectively. This Committee plays a crucial role in maintaining harmony and ensuring compliance with by-laws, ultimately fostering a more cooperative living environment. For unit owners, understanding and utilizing these mechanisms is essential for resolving disputes amicably and efficiently. Should internal resolutions prove unsatisfactory, the option to appeal to the Environment and Land Court offers a further layer of protection and fairness, ensuring that all parties have access to justice. Through these provisions, the Act ensures that the rights and responsibilities of unit owners are upheld, contributing to the overall well-being and cohesion among the property owners.

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UNCOVERING THE TRUTH: DEBUNKING MYTHS IN LAND-BASED CARBON PROJECTS

Stella ORENGO
Director,
Bio-climate Solutions
director@bioclimatesolutions.com

Imagine a future where Kenya stands at the forefront of global climate action, setting an ambitious course to slash greenhouse gas emissions by 32% by 2030. This is not just a dream but a commitment enshrined in the country's Nationally Determined Contribution (NDC). With a vision that extends to achieving net-zero emissions by 2050, Kenya is focusing on transforming its energy, transport, and forestry sectors. The Climate Change Act of 2016 acts as the backbone of this journey, driving accountability and fostering global partnerships. However, the road ahead is steep, with a staggering $62 billion price tag, largely dependent on the support of international funding.

Carbon credits are a key tool for Kenya, offering financial benefits by trading credits that represent the removal or avoidance of one metric ton of CO_2. These credits align local development needs with global climate goals, creating economic incentives for emission reductions through nature-based and technological solutions. While Kenya's leadership has prioritized nature-based solutions like land and forestry, there is concern and misinformation about these projects, particularly fears of "selling land" under the guise of carbon credits.

Land ownership in Kenya and Africa carries significant emotional and cultural weight, leading to confusion and skepticism about carbon credit projects. Addressing these myths requires clear, evidence-based communication to counter misinformation and ensure that carbon credit systems are understood as mutually beneficial, providing revenue while supporting global emission reductions.

CARBON CREDITS REQUIRE OWNERS TO SELL THEIR LAND.

Carbon credits do not inherently require landowners to sell their land. Instead, they often involve agreements that allow landowners to maintain ownership while participating in carbon offset programs. Here's how it typically works:

Landowners can enter into agreements with carbon offset programs or organizations to use their land for carbon sequestration activities, such as reforestation or afforestation. These agreements specify how carbon credits will be generated and how benefits will be shared.

The landowner retains ownership and control over the land but agrees to manage it in a way that supports carbon sequestration goals. This might involve changes in land use or management practices to maximize carbon storage.

The carbon credits generated from these activities are then sold on carbon markets. The landowner typically receives a share of the proceeds from the sale of these credits, based on the terms of their agreement.

Agreements are detailed in contracts that outline the rights and responsibilities of both parties. These contracts ensure that landowners maintain ownership and use rights while participating in the carbon credit market.

ONLY LAND-BASED PROJECTS GENERATE CARBON CREDITS

Carbon credits can also originate from non-land-based methods like renewable energy projects, energy efficiency improvements, and carbon capture technologies. Land-based projects are just one piece of the puzzle and include any of the following:

- Reforestation/Afforestation where planting trees on deforested or non-forested land to capture carbon dioxide.
- Forest Conservation done through preventing deforestation and degradation in existing forests to preserve their carbon storage.
- Soil Carbon Sequestration entails implementing agricultural practices that increase the amount of carbon stored in soil.
- Wetland Restoration involves restoring wetlands to enhance their carbon storage and methane reduction capabilities.

Local Communities Lose Land Access with Carbon Projects. Well-managed carbon credit projects should prioritize the rights and involvement of local communities. This means engaging them early in the planning stages and keeping them actively informed and involved throughout the project. Clear, legally binding agreements must be established to define land use rights, benefits, and responsibilities, with formal consent from the communities secured. Fair benefit-sharing mechanisms should be implemented, such as financial compensation or infrastructure improvements, while ensuring access to essential resources like water and grazing land is maintained.

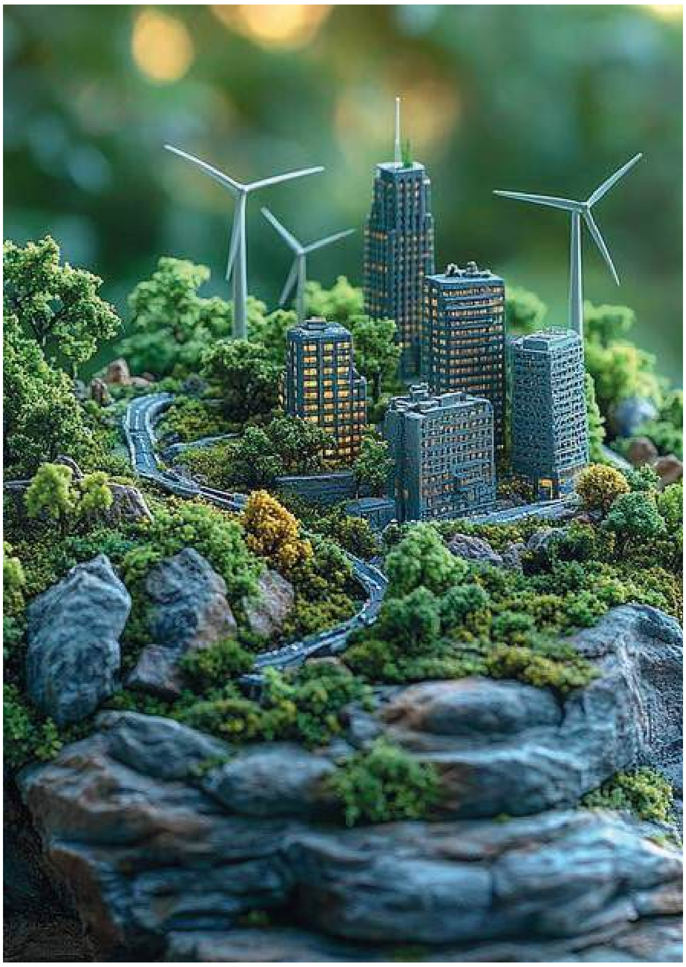
To protect local interests, it's important to advocate for secure land tenure systems and supportive policies. The project's impacts on communities should be regularly assessed, with feedback mechanisms in place to address any concerns quickly. Building community capacity through training and education will empower locals to participate in and oversee the project. Transparency should be maintained by publicly sharing project information and considering independent audits to ensure adherence to agreements. By following these practices, carbon credit projects can better align with community interests and rights, fostering more equitable and sustainable outcomes.

THE CARBON CREDIT MARKET IS TOO COMPLEX FOR SMALLHOLDERS

The carbon credit market is often seen as too complex for smallholders, but this isn't entirely true. Despite its complexities, several programs and initiatives aim to make it accessible for small landholders. We have organizations that offer technical support and legal advice to help smallholders navigate the market and certification process. Clear communication goes a long way to help smallholders understand the benefits and requirements of the market. All in all, with the right financial and technical assistance smallholders can successfully participate in the carbon credit market and contribute to climate action.

CONCLUSION

To truly unlock the potential of carbon projects, we must shatter the myths that cloud their impact. This demands more than just words—it calls for a steadfast commitment to education, transparency, and policies that not only protect land rights but also guarantee real, tangible benefits for all. The path forward lies in crafting strong legal frameworks, empowering communities, building local expertise, and ensuring rigorous oversight. By embracing these strategies and fostering global cooperation, we can turn skepticism into success stories, making carbon projects a powerful force for good.



COMPENSATION OF HUMAN-WILDLIFE CONFLICT IN KENYA: LAW AND PRACTICE

Isaya LEMERKETO
Litigation Clerk,
CM Advocates LLP
litigationclerks@cmadvocates.com

In Kenya, addressing human-wildlife conflict (HWC) through compensation is more than just a financial transaction—it's a crucial part of community-based wildlife management. By offering relief to those impacted by wildlife interactions, the Kenya Wildlife Service, alongside the Ministry of Tourism and Wildlife, strives to maintain harmony between people and nature.

Yet, as we explore this process, it's vital to view it through the lens of environmental justice. This perspective highlights the need for fairness and equity, ensuring that all communities, especially those marginalized, are treated justly under environmental laws.

LEGAL FRAMEWORK

The Wildlife Conservation and Management Act of 2013 sets the stage for this, detailing compensation for losses caused by wildlife. Each county, through its Community Wildlife Conservation Committee, plays a key role in assessing claims and ensuring that justice is served.

Judicial pronouncements, such as in the case of ***HMH v Kenya Wildlife Service (Tribunal Appeal 010 of 2020) [2022] KENET 760 (KLR) (Civ) (12 October 2022)***, underscore the importance of preserving Kenya's wildlife heritage while also ensuring the rights of individuals affected by wildlife are protected. The Tribunal emphasized that claims must be handled with seriousness and fairness, respecting both wildlife and human life and allowing claimants to present evidence and be heard.

This article explores the compensation claim process for victims of HWC, detailing the steps involved and the legal considerations underpinning this vital aspect of wildlife conservation and human-wildlife conflict resolution in Kenya. It also examines the socio-economic impacts of these processes and the role of well-being in understanding community-environment relationships.

THE PROCESS OF CLAIM FOR COMPENSATION OF HWC AT THE COUNTY LEVEL

STEP-BY-STEP PROCESS

1. **ADR**
   Any dispute arising concerning wildlife management, protection, or conservation should initially be referred to the lowest possible level within the devolved government system, as outlined in the Devolution of Government Act. This includes utilizing traditional resolution mechanisms as provided under Section 117 (1) of the Wildlife Conservation and Management Act (WCMA).

2. **Reporting the Incident**
   The affected person or the personal representative or successor or assign may (emphasis added) report the incident to the nearest KWS office or the County Wildlife Compensation Committee (CWCC) within 48 hours of the occurrence. (Sec 25 (1) of WCMA)

   The report should include detailed information about the incident, such as the type of wildlife involved, the nature of the damage, and the exact location.

3. **Verification and Assessment**
   Upon receiving the report, KWS officers or CWCC members established under Sec 18 of WMCMA will visit the site to verify the incident and assess the extent of the damage or loss.

   They will document their findings through photographs, written reports, and other necessary evidence.

4. **Submission of Claim**
   The affected individual must submit a formal compensation claim form to the CWCC. This form can be obtained from KWS offices or local administration offices.

   The claim form must be accompanied by the assessment report, identification documents, proof of ownership of the damaged property, and any other relevant documents.

5. **Review by County Wildlife Compensation Committee (CWCC)**
   The CWCC reviews the submitted claims to ensure they are complete and valid.

   The committee may conduct additional investigations if necessary to verify the claims.

6. **Approval and Recommendation**
   Once the CWCC verifies the claim, it prepares a report with recommendations and forwards it to the National Wildlife Compensation Committee (NWCC) for further action.

   The report includes details of the incident, the assessment findings, and the recommended amount of compensation.

7. **National Wildlife Compensation Committee (NWCC) Review**
   The NWCC reviews the recommendations from the CWCC and makes the final decision on the compensation amount. Section 3 of the Wildlife Conservation and Management Act (WCMA) stipulates that the Cabinet Secretary shall consider the recommendations made under subsection (2) and, where appropriate, provide compensation to the claimant as follows: (a) in the case of death, five million shillings; (b) in the case of injury resulting in permanent disability, three million shillings; (c) in the case of any other injury, up to two million shillings, depending on the extent of the injury.

   If the NWCC approves the claim, it authorizes the release of funds for compensation.

8. **Payment of Compensation**
   The approved compensation amount is disbursed to the claimant through the CWCC.

   The payment is usually made via bank transfer or other official payment methods.

APPEAL PROCESS IF UNSATISFIED WITH THE COUNTY WILDLIFE COMPENSATION COMMITTEE'S (CWCC) DECISION ON COMPENSATION

If the claimant is not satisfied with the decision of the County Wildlife Compensation Committee (CWCC) on compensation in Kenya, they have the right to appeal as per Section 25 (6) of the Wildlife Conservation and Management Act (WCMA) CAP 376. This section states: "***A person who is dissatisfied with the award of compensation by either the County Wildlife Conservation and Compensation Committee or the Service may, within thirty days after being notified of the decision and award, file an appeal to the National Environment Tribunal and, on a second appeal, to the Environment and Land Court.***"

The Appeal Process

1. **Notification of Decision**
   Once you receive the notification of the decision and award from the CWCC, you have THIRTY DAYS to file an appeal if you are dissatisfied with the outcome.

2. **Filing an Appeal with the National Environment Tribunal (NET)**
   Prepare a formal appeal stating the grounds for your dissatisfaction with the CWCC's decision.

   Submit the appeal to the National Environment Tribunal within the thirty-day window. Ensure you include all necessary documentation, such as the CWCC decision notice, evidence presented in the original claim, and any additional information supporting your appeal.

3. **Hearing at the National Environment Tribunal**
   The NET will schedule a hearing where you can present your case.

   During the hearing, you may need to provide testimony, present evidence, and possibly bring witnesses to support your claim.

The NET will review the evidence and make a determination regarding your appeal.

4. **Decision by the National Environment Tribunal**
   After reviewing the case, the NET will issue a decision. If you are satisfied with this decision, the process ends here.

   If you are still dissatisfied with the outcome, you have the option to file a second appeal.

5. **Filing a Second Appeal with the Environment and Land Court**
   If you wish to appeal the NET's decision, prepare and submit a second appeal to the Environment and Land Court.

   Following the NET's decision, this must also be done within a specified period (typically within thirty days).

6. **Hearing at the Environment and Land Court**
   The Environment and Land Court will schedule a hearing for your appeal.

   Similar to the NET process, you will present your case, provide evidence, and possibly bring witnesses.

7. **Court of Appeal**
   If aggrieved by the decision of the Environment and Land Court, one can file an appeal with the Court of Appeal.

ENVIRONMENTAL JUSTICE AND WELL-BEING CONSIDERATIONS

Incorporating environmental justice into Kenya's human-wildlife conflict (HWC) compensation process means acknowledging the unique struggles faced by vulnerable communities, particularly indigenous groups and low-income farmers. These communities, living close to wildlife habitats and reliant on natural resources, are often the most affected by wildlife conflicts.

A comprehensive compensation strategy should do more than just provide financial relief; it should strengthen the resilience of the community. This means making sure that everyone, regardless of their economic standing, can access support and have a voice in the decisions that affect them. The process must be transparent and fair, earning the trust and respect of those involved.

True resilience comes from active community engagement, where members are not just recipients but participants in wildlife management, sharing responsibility and fostering cooperation. It also means creating sustainable livelihoods that reduce reliance on risky activities, lowering the chances of conflict with wildlife. Importantly, it recognizes the emotional impact of these conflicts, offering support to those affected, ensuring that their mental well-being is also addressed.

By focusing on these areas, Kenya's HWC compensation framework can go beyond immediate relief, contributing to long-term community well-being and ensuring environmental justice.

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CM ADVOCATES LLP

I&M Bank House, 7th Floor
2nd Ngong' Avenue Off Ngong' Road
Upperhill, Community
P.O BOX 22588-00505, Nairobi, Kenya
Email: law@cmadvocates.com

EFFECTIVE LEGAL STRUCTURING FOR YOUR FAMILY-OWNED BUSINESS

Melissa MACHUA
Senior Associate,
CM Advocates LLP
mmachua@cmadvocates.com

Running a family-owned business is more than just managing operations; it's about building a legacy that can be handed down through generations. Beyond personal aspirations, this legacy contributes to the broader economy by fostering stability, creating jobs, and boosting local prosperity. However, as you navigate the complex landscape of business succession, challenges like family dynamics, legal intricacies, and conflict management can seem daunting.

But imagine a future where your family business not only survives but thrives through the generations—where family harmony and business success go hand in hand. By adopting legally effective structures, you can transform potential hurdles into stepping stones, ensuring transparency, accountability, and a flourishing enterprise. Rather than reactive problem-solving, it is advisable to adopt a proactive approach that positions your family business for long-term success. How? Read on to find out more.

LEGALLY EFFECTIVE STRUCTURES

Disputes in family businesses are common, often arising from undefined roles, poor communication, and trust issues. The solution lies in establish clear governance structures that encourage collaboration and conflict resolution.

1. Family institutions

1.1. Family Meetings- family meetings or assemblies serve as informal forums for discussions and decision making as well as succession planning to ensure that all family members are informed and have an opportunity to contribute to the process.

1.2. Family councils- these serve as formal structures that assume responsibility for overseeing management and governance of the business, and can include non-family members. Family councils can also oversee the succession planning process, ensuring that decisions are made in the best interest of the family and the business.

1.3. A family constitution- this statement of family principles outlines the family's vision, values, and policies regarding their relationship with the business. It can also outline the succession policies and procedures, helping to ensure a smooth transition of ownership and management.

These mechanisms are helpful in promoting communication, collaboration and conflict resolution within the family business, leading to greater commitment and dedication to its success.

2. Articles of Association

Articles of Association (hereinafter referred to as "Articles") serve as a legal document that outlines your business's structure, governance and management. As tempting as it may be, it is never advisable to copy and paste model Articles that are provided on business registration services. It is instead beneficial to craft unique Articles in order to create a stable and well-functioning family business that can weather the challenges and changes of the future. For example, as far as possible, your Articles should:

i. Incorporate the founder's vision, values, and goals into the business to maintain focus and direction after their exit;
ii. Address key issues such as share capital, transfer of shares, creation of an additional class of shares and director appointments to clarify ownership structure, protect shareholder rights, and ensure smooth business transitions; and
iii. Mirror the business with the family constitution to safeguard the family's legacy and protect the interests of all stakeholders, including family members, shareholders and employees.

3. Shareholder's Agreement

A shareholder's agreement that establishes the rights and obligations of the shareholders is one of the most critical documents you should have in place, especially when multiple family members are involved in the business. Ideally, your shareholder's agreement should contain the following:

i. Clear rules for raising funds to avoid shareholder conflicts;
ii. Guidelines on competition, transparency, and accountability to build trust among shareholders;
iii. A clear dividend policy, mechanisms to manage shareholder entry and exit, and a plan for resolving disputes to keep the business stable and well-governed;
iv. The procedure for transferring shares, whether within the family or to outsiders; and
v. Protections for minority shareholders to ensure they are treated fairly during succession.

4. Board of Directors (the "Board")

The Board acts as a facilitator of communication, fostering effective dialogue among family members and non-family executives (if any). Your Board of Directors isn't just a regulatory requirement—it's the strategic heart of your business. By appointing a diverse and independent board, you introduce objectivity and expertise that can guide your business through succession and beyond. The board plays a crucial role in mentoring potential successors, ensuring they are well-equipped to lead the business into the future.

5. Employment Policy & Contracts

Employment policies and contracts serve to establish legally binding relationships between the business and its employees. Through well-drafted employment contracts, crucial employment terms and conditions such as salary, benefits and job duties can be explicitly defined, creating a framework that protects the rights and interests of both parties in the event of a dispute. These documents not only prevent misunderstandings but also ensure fair treatment and legal compliance, fostering a professional and harmonious work environment.

In succession planning, these contracts and policies play a pivotal role in retaining key employees and ensuring the smooth operation of your business. For example, you may include provisions for key employees to receive equity or ownership stakes over time, serving as incentives for their continued dedication and contribution to your business during the transition phase. Additionally, you may consider including non-compete clauses and other protective provisions in these contracts to help safeguard your business's interests by limiting the ability of employees to leave and establish competing ventures during the transition period.

CONCLUSION

The fundamental and interdependent connection between family businesses having legally effective structures and achieving an effective business succession plan cannot be overstated. It prompts us to consider how establishing such structures goes beyond mere compliance with legal requirements but also serves as a strategic enabler for the seamless transfer of ownership and management, while preserving the business's integrity, sustainability and long-term success. By proactively addressing legal considerations, your family business can navigate the complexities of succession more effectively, enhancing its resilience, adaptability and ability to contribute meaningfully to the economy for generations to come.

TAXATION FOR REAL ESTATE DEVELOPERS: MAXIMIZING SUCCESS IN RESIDENTIAL PROPERTY DEVELOPMENT

Tabitha MUCHIRI
Tax Associate,
CM Advocates LLP
tmuchiri@cmadvocates.com

CORPORATE INCOME TAX (CIT)

In the intricate web of real estate development, where architectural visions meet the realities of construction, one element quietly looms over every decision—the Corporate Income Tax (CIT). For developers in Kenya, CIT isn't just another line item on a balance sheet; it's a financial force that can shape the trajectory of entire projects. Governed by the Income Tax Act, CIT is a reminder that with every brick laid and every transaction sealed, the taxman is a silent partner in the journey.

For developers, understanding and managing CIT is crucial. The current corporate tax rate stands at 30% for both resident and non-resident companies operating in Kenya. If your projected annual CIT liability exceeds Kshs. 40,000, you're required to make tax payments in instalments throughout the year via iTax. This system of instalment payments is designed to help businesses manage their tax liabilities in a more predictable manner, spreading out the financial impact over four instalments made in the 4th, 6th, 9th, and 12th months of the fiscal year. Instalment tax can be computed using either the prior year's tax payments, multiplied by 110%, or by estimating the current year's profit and the tax payable on that amount. This approach is especially beneficial for new businesses or those transitioning from losses to profitability.

APPLICATION OF THE 15% TAX REBATE

Kenya offers a significant incentive for developers through a 15% Corporate Tax rebate, which is applicable when a company constructs at least 100 residential units within a year. This rebate is a strategic tool designed to encourage the development of residential housing, contributing to the country's broader housing goals. However, obtaining this rebate requires meeting specific criteria and providing comprehensive documentation.

To qualify for the rebate, developers must submit a variety of documents, including the company's Memorandum and Articles of Association, a Certificate of Incorporation, a company search not older than six months, and a Tax Compliance Certificate. Additionally, detailed project documentation is required, such as a project profile, occupation certificates, sale and transfer documents, title deeds, and approvals from relevant government agencies. The rebate process is thorough, ensuring that only those developers who meet all the necessary conditions benefit from the incentive. Notably, this rebate is not limited to developers involved in affordable housing but is available to all developers meeting the required conditions.

REVENUE RECOGNITION

One of the more complex areas in real estate development is revenue recognition. For developers, revenue is not recognized when deposits are received—such as through off-plan sales—but only when the actual transfer of units to the buyer occurs. This is in line with the principles set out in the International Accounting Standard (IAS) 15, which governs revenue from contracts with customers. According to IAS 15, revenue from the sale of goods should only be recognized when the following conditions are met:

1. *The developer has transferred significant risks and rewards of ownership to the buyer.*
2. *The developer no longer retains managerial involvement or effective control over the units sold.*
3. *The amount of revenue can be reliably measured.*
4. *The economic benefits of the transaction are likely to flow to the developer.*
5. *The costs related to the transaction can be measured reliably.*

This principle ensures that revenue is only recognized when there is substantial completion of the transaction, reducing the risk of disputes and ensuring that financial statements accurately reflect the business's actual performance.

This approach was reaffirmed in the case of Longonot Gate Developers vs Commissioner Domestic Taxes [2015], where the Tax Appeals Tribunal emphasized that the mere signing of a Letter of Offer or purchase contract is not sufficient for revenue recognition. The actual realization of the transaction’s intentions occurs later when both parties fulfill their contractual obligations. The Tribunal highlighted that if a developer fails to deliver the units, they would be required to refund all deposits, thus reinforcing the importance of aligning revenue recognition with the actual delivery of goods or services.

CONCLUSION

Strategic tax planning is essential for real estate developers aiming to maximize the profitability of their projects while ensuring compliance with Kenya's tax laws. By understanding and effectively managing Corporate Income Tax, leveraging the 15% tax rebate for residential developments, and aligning revenue recognition with best practices, developers can navigate the complexities of the real estate market with confidence.

At CM Advocates LLP, we are committed to guiding you through these challenges, offering tailored tax advisory services that help you unlock the full potential of your real estate developments. With our expertise, you can focus on building your vision, knowing that your financial and tax matters are in expert hands.


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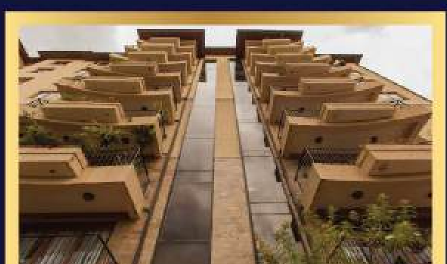
APARTMENT
KIAMBERE ROAD
2 BDRM
ALL ENSUITE
APARTMENT
KES.
20
MILLION



DESCRIPTION

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- Borehole & Backup Generator
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The Property Boutique Ltd
I&M Bank House, 5th Floor,
2nd Ngong Avenue
P.O. Box 22588 - 00505,
Nairobi, Kenya
Email: info@propertyboutique.co.ke

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If you have any questions, do not hesitate to reach out to the following key contacts:

Joan MAINA
Advocate and Author's Editor
CM Property Digest
+254 719 811 400
jmaina@cmpropertydigest.com

CM ADVOCATES LLP

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CM PROPERTY DIGEST

Head Office, Nairobi:
I&M Bank House, 5th Floor
2nd Ngong Avenue
P.O. Box 22588 - 00505 | Nairobi, Kenya
Tel: +254 20 221 0978 | +254 20 221 1077
Cell: +254 113 050 947
Email: info@cmpropertydigest.com

Mombasa Office:
Links Plaza, 3rd Floor
Links Road, Nyali
P.O. Box 90056 - 80100 | Mombasa, Kenya
Tel: +254 41 447 0758 | +254 41 447 0548
Cell: +254 746 995 283
Email: mombasaoffice@cmadvocates.com

Diani Office:
Aga Khan Building, Ground Floor,
Diani, Kenya
P.O. Box 90056 - 80100 | Mombasa, Kenya
Tel: +254 772 246 208
Email: dianioffice@cmadvocates.com

Tanzania Office:
7 Mwaya Street, Chole Road,
Masaki Msasani, Kinondoni
P.O. Box 11481 | Dar es Salaam, Tanzania
Tel: +255 713 411 721 | +255 654 702 304
+255 682 495 603
Email: law@cymbellattorneys.com

Uganda Office:
Plot 49, Ntinda Rd,
Rovis Apartments, First Floor
P.O. Box 22276 Kampala, Uganda
Tel: +256 776 739 643
Email: law@cymbelladvocates.com

Rwanda Office:
Kigali Heights Building,
West Wing, Third Floor
P.O. Box 493, Kigali, Rwanda
Tel: +250 252 580 152
Email: law@cmadvocates.rw

Nigeria Office:
Plot 5, Yesuf Abiodun Way,
Off Ozumba Mbadiwe Way,
Oniru, Victoria Island
P.O. Box 105102, Lagos State, Nigeria
Tel: +234 803 603 3651
Email: law@cmadvocatesnigeria.com