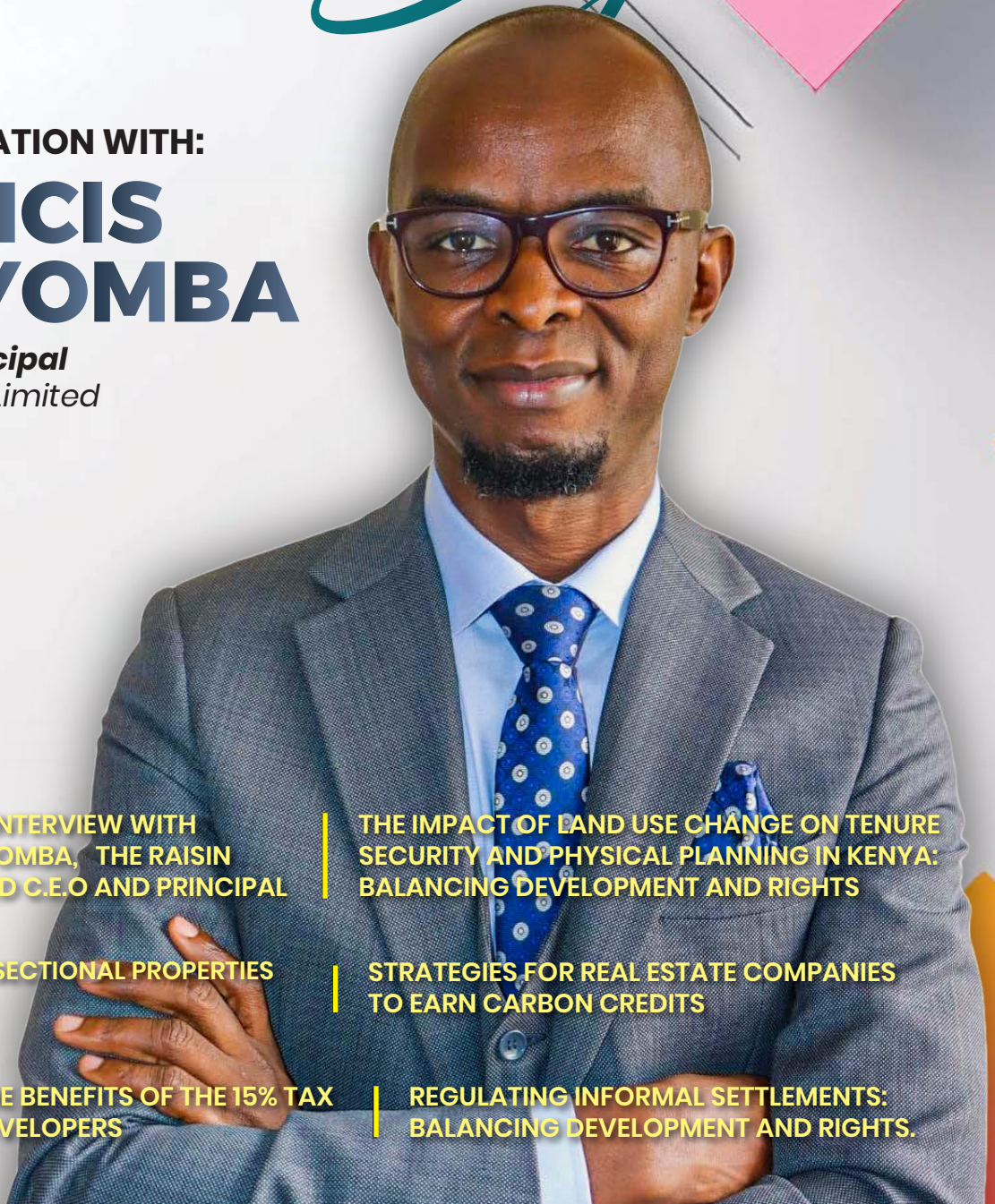


MONTHLY *Digest*

IN CONVERSATION WITH:

FRANCIS NASYOMBA

*C.E.O and Principal
Raisin Capital Limited*



IN THIS ISSUE

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A legal education magazine

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AN EXCLUSIVE INTERVIEW WITH FRANCIS NASYOMBA, CEO AND PRINCIPAL OF RAISIN CAPITAL LIMITED

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An exclusive interview with Francis Nasyomba, CEO and Principal of Raisin Capital

INTRODUCTION

Welcome back to CM Property Digest**, your go-to destination for compelling insights and vibrant discussions on all things property across Africa. From green financing and corporate due diligence to quantity surveying and the intricate world of property development and management, we've explored the dynamic landscape of Kenya's real estate market from both global and local perspectives. Along the way, we've had the privilege of sitting down with the trailblazers and innovators shaping this sector.

Today, we're excited to bring you an exclusive interview with none other than Francis Nasyomba, the visionary CEO and Principal of Raisin Capital, a premier corporate finance firm specializing in capital raising and transaction advisory in Kenya and across East Africa. In this insightful conversation, Francis takes us through his inspiring journey, the firm's milestones, and its exciting future. Join us as we uncover the principles, challenges, and triumphs that have driven his remarkable career and the success of Raisin Capital.

1. HELLO FRANCIS, IT IS A PLEASURE TO HAVE YOU WITH US AT CM PROPERTY DIGEST. COULD YOU START US OFF BY GIVING OUR READERS AN OVERVIEW OF RAISIN CAPITAL?

Raisin Capital is an African fundraising house. We contribute to Africa's success by assisting businesses and entrepreneurs to access capital through our

products Raisin Capital and Capital Connect (www.capitalconnect.africa), an African capital raising platform.

We have been active for the last six years and engage in transactions across the East African region in Kenya, Uganda, Tanzania, Rwanda, Somalia, Ethiopia and South Sudan.

Within a short period, Raisin has gained recognition as being a top industry player in East Africa, having been involved in more than 70 transactions whose values total more than USD 500 Million in capital raising and advisory engagements.

Our online platform, www.capitalconnect.africa aims to reduce the capital raising hustle especially for small ticket transactions of less than USD 5M.

2. WHAT SPECIFIC SERVICES ARE NICHE TO THE COMPANY, SETTING IT APART IN THE INDUSTRY AND HOW DO CLIENTS BENEFIT FROM PARTNERING WITH RAISIN CAPITAL?

At Raisin Capital, we offer a variety of capital-raising and transaction advisory services tailored to the unique needs of entrepreneurs and enterprises at every stage of their journey. We are cognizant that businesses need flexible and customized solutions for the different transaction sizes.

Our typical capital raising process goes through the following stages:

- a) **Investor Eligibility and Readiness-** We work closely with clients to ensure businesses are well positioned and ready for investment conversations, performing investor readiness checks, seller due diligence and identifying actions and activities that will enhance business value and positioning as it readies itself for the capital raising market.
- b) **Investor Preparedness-** We review businesses and assist in the preparation of the requisite marketing material including Teasers, Financial Models, Valuations, Pitch Decks and Information Memorandums. This marketing material is used to engage potential investors.
- c) **Investor Matchmaking-** We connect businesses seeking funding with potential investors by identifying the right investors—such as strategic investors, venture capitalists, or Private Equity funds—who not only have the financial capacity to invest but also possess an interest in the specific industry or market segment. We also provide deal pipelines to Investors. Our platform www.capitalconnect.africa serves a dual role of connecting businesses to investors and investors to the right businesses.
- d) **Deal Structuring-** We assist in the discovery of optimal capital structures through dynamic structuring options, including debt and equity structures. We work closely with clients and investors to ensure adoption of appropriate transaction structures. Raisin supports in the

transaction completion including managing structuring conversations, reviewing proposed term sheets and advising clients plus supporting in due diligence process, support in legal negotiations and regulatory approvals.

Most of our transaction advisory services are offered within the capital raising process. However, we still support our clients independently with transaction advisory services like business valuations, transactions structuring and opportunity analyses, just but to mention a few.

3. IN THE WORLD OF INVESTMENT BANKING, HOW EXACTLY WOULD YOU DESCRIBE REAL ESTATE FINANCE AND DEVELOPMENT, AND THEREFORE WHAT IS RAISIN CAPITAL'S ROLE IN IT?

I would describe Real Estate Finance and Development as the financing of real estate projects, such as residential, commercial, and industrial developments. This includes providing capital for land acquisition, construction, and ongoing operations, as well as managing financial risks associated with these projects. Raisin Capital comes hand in hand to help in the capital raising process by coming up with ideal financing solutions tailored to meet our clients' need. Additionally, we take part in the development of material to facilitate investment. Case in point, we are proud to disclose that Raisin Capital, alongside Liaison Financial Services, served as Transaction Advisors for the First Ever Sukuk Bond (Linzi Sukuk Bond), a KES 3 billion Islamic Bond listed on the Nairobi Stock Exchange in July 2024. This initiative was designed to create new investment opportunities and support Kenya's affordable housing agenda.

4. THE REAL ESTATE FINANCE INDUSTRY IS EVER EVOLVING, HOW DOES RAISIN CAPITAL STAY AHEAD OF THE CURVE IN AN INDUSTRY WHERE INNOVATION IS KEY, AND CAN YOU SHARE SOME EXAMPLES OF RECENT INNOVATIONS YOU'VE LED THAT HIGHLIGHT YOUR LEADERSHIP IN PIONEERING NEW INVESTMENT STRATEGIES OR TECHNOLOGIES?

Raisin Capital tends to stay abreast with these changes by taking into consideration the following investment strategies:

a) **Strategic Partnerships and alliances**

Raisin Capital has collaborated with Partners who are active in the real estate industry, with players such as yourselves, CM Property Digest. This partnership enables Raisin Capital to access new market insights and potential opportunities.

Additionally, our partnership with Liaison Group bore fruits in the Linzi Sukuk Bond.

We are currently pursuing other partnerships aimed at ensuring we can support women led, women impact businesses access capital faster and more effectively.

b) Market research

We conduct intensive research on the real estate market to monitor industry trends, regulatory changes and emerging technologies to identify potential opportunities and risks.

5. WHAT DO YOU SEE AS THE BIGGEST CHALLENGES FACING THE INVESTMENT BANKING INDUSTRY TODAY, AND HOW IS RAISIN CAPITAL POSITIONING ITSELF TO TURN THESE CHALLENGES INTO OPPORTUNITIES THROUGH STRATEGIC INITIATIVES OR INNOVATIVE APPROACHES?

The investment banking industry is currently grappling with a number of significant challenges, including increased regulatory scrutiny, heightened competition from fintech firms, technological disruption, and economic uncertainty as a result of unpredictable tax regimes, just but to name a few.

At Raisin Capital, we are proactively addressing these challenges through diversifying our product offerings and expanding our geographic reach to mitigate potential risks and capture new opportunities.

Additionally, we embrace innovation and adapt to the changing market landscape, to thrive in the face of industry challenges and capitalize on emerging trends.

Key to Raisin is we are focused on the long term to build a sustainable African Capital Raising House. We are in for the long haul and not a hit and run approach to transactions.

6. IN AN ERA OF GLOBAL UNCERTAINTY, HOW DOES RAISIN CAPITAL APPROACH RISK MANAGEMENT, ESPECIALLY IN EMERGING MARKETS, AND WHAT SPECIFIC STRATEGIES OR TOOLS DO YOU EMPLOY TO MITIGATE RISKS AND ENSURE STABILITY?

The key strategy Raisin Capital employs to mitigate risks and ensure stability is by spreading our advisory services across multiple countries in East Africa, to reduce exposure to specific market risks.

We are also abreast of market happenings, client demands and changes in their demands and what the needs are. We are flexible and do not operate strait jacket products, we listen to the clients, investors and structure transactions that ensure winnings from both ends.

7. RAISIN CAPITAL IS HIGHLY PROGRESSIVE IN INNOVATIVE FINANCING SOLUTIONS. CAN YOU SHARE HOW YOUR FIRM COLLABORATES WITH OTHER KEY PLAYERS IN THE PROPERTY SECTOR, SUCH AS DEVELOPERS OR GOVERNMENT AGENCIES, TO DRIVE IMPACTFUL PROJECTS?

Raisin Capital fosters collaborative partnerships with key industry players such as CM Property, Liaison Group and other partners. For confidentiality, we may not be able to disclose all.

8. HOW DOES RAISIN CAPITAL SUPPORT PROPERTY DEVELOPERS AND INVESTORS IN NAVIGATING REGULATORY OR LEGAL HURDLES, PARTICULARLY IN EMERGING MARKETS LIKE KENYA?

Raisin Capital offers support through the earlier mentioned services like Investor Eligibility and Readiness, Investor Preparedness, Investor Matchmaking and Deal Structuring.

9. IN THIS DIGITAL WORLD WE LIVE IN TODAY, HOW IS RAISIN CAPITAL LEVERAGING TECHNOLOGY AND DATA ANALYTICS TO IMPROVE DECISION-MAKING AND CLIENT OUTCOMES, AND CAN YOU SHARE EXAMPLES OF TECHNOLOGICAL INNOVATIONS THAT HAVE HAD A SIGNIFICANT IMPACT?

Raisin Capital recognizes the transformative power of technology in enhancing decision-making and delivering superior client outcomes and faster decision making. For example, use of AI tools has reduced significantly the execution time for our Projects by reducing the time spent on repetitive tasks, and has also facilitated faster decision making.

We have rolled out a digital product on www.capitalconnect.africa that is reducing the hustle and costs of capital raising.

10. GIVEN THE GROWING IMPORTANCE OF ESG (ENVIRONMENTAL, SOCIAL, GOVERNANCE) CRITERIA IN INVESTMENT, HOW IS RAISIN CAPITAL INTEGRATING THESE PRINCIPLES INTO ITS INVESTMENT STRATEGIES, AND CAN YOU PROVIDE EXAMPLES OF SUSTAINABLE PROJECTS OR INVESTMENTS THAT DEMONSTRATE YOUR COMMITMENT TO ESG?

Raisin Capital recognizes the growing importance of ESG criteria in the investment landscape. We believe that sustainable investments offer both financial returns and positive societal and environmental impacts.

We have engaged with various clients whose focus is on affordable and clean energy, decent work and economic growth, gender equality and responsible consumption and production just but to name a few. We note that women, youth and rural development are becoming key themes in investment and we are developing and offering products that help this demographic access capital easily.

11. HOW DO YOU SEE THE ROLE OF INVESTMENT BANKING EVOLVING IN THE NEXT 5-10 YEARS, AND WHAT ROLE WILL RAISIN CAPITAL PLAY IN SHAPING THAT FUTURE, INCLUDING ANY LONG-TERM STRATEGIES OR INNOVATIONS YOU PLAN TO IMPLEMENT?

The investment banking industry is poised for significant transformation over the next 5-10 years, driven by technological advancements, regulatory changes, and evolving client needs. At Raisin Capital, we are committed to shaping this future through strategic innovation and a focus on sustainable and client-centric solutions. This will be through pursuing Strategic Partnerships, promoting Sustainable Finance and adopting Technology-Driven Innovations. Eventually, every transaction has to have a hand shake, we thus feel investment banking will keep growing with growth in economies and businesses and investors seeking growth and expansion opportunities.

12. WHAT IS YOUR LONG-TERM VISION FOR RAISIN CAPITAL, AND HOW DO YOU PLAN TO NAVIGATE THE COMPANY THROUGH THE CURRENT ECONOMIC LANDSCAPE, INCLUDING YOUR STRATEGIC GOALS FOR THE NEXT DECADE AND THE SPECIFIC MEASURES YOU WILL TAKE TO ENSURE GROWTH AND STABILITY DESPITE ECONOMIC CHALLENGES?

Raisin Capital aims to become the leading capital-raising house in Africa by ensuring efficient access to appropriate funding for its clients. We are focusing on creating value through market penetration and product development. However, the real measure we have in place is our people, we prioritize the recruitment and retention of top talent through ensuring the team is effectively supported.

13. WHAT DRIVES YOU PERSONALLY AS A LEADER, AND WHAT ARE SOME OF THE KEY LESSONS YOU'VE LEARNED THROUGHOUT YOUR CAREER THAT CONTINUE TO INFLUENCE YOUR DECISIONS TODAY, INCLUDING HOW THESE LESSONS GUIDE YOU IN YOUR ROLE AT RAISIN CAPITAL?

As an entrepreneur, I would say that the biggest driver is the want to keep scaling the mountain. Not a need but a want to ensure that we keep doing better by our clients

and people. It is very satisfying seeing and engaging with a happy client, an entrepreneur who has raised capital and is set for growth, seeing their visions and dreams come alive mainly because we supported them. We recently supported a healthcare facility and it is very satisfying seeing the facility come to life.

The biggest lesson I have learnt is that all businesses are people businesses. Whether you call yourself a tech business or a shoe business, it boils down to people. I believe the recent changes at the NIKE corner office are an apt example of how even the best brands can stumble if the focus on people is lost.

14. LINZI SUKUK HAS BEEN INTRODUCED INTO THE KENYAN MARKET AIMING TO PROVIDE HOUSING AT AN AVERAGE COST OF KES 1.7MILLION WHICH IS LOWER THAN THE MARKET RATE. WHAT UNIQUE OPPORTUNITIES DOES THE NEWLY INTRODUCED SUKUK BOND, LAUNCHED DURING THE RECENT BELL RINGING CEREMONY IN JULY, OFFER IN TERMS OF INVESTMENT AND LONG-TERM GROWTH FOR BOTH LOCAL AND INTERNATIONAL INVESTORS? ARE THERE ANY RISKS INVOLVED IN SUCH INVESTMENT?

The recently launched Linzi Sukuk Bond presents unique investment opportunities by providing affordable housing solutions while aligning with ethical financing principles. This innovative Islamic bond not only caters to the growing demand for affordable housing but also enables local and international investors to engage in socially responsible investment. The Sukuk bond structure allows for risk-sharing, offering a stable return on investment tied to the underlying asset. The launch reflects a commitment to supporting Kenya's affordable housing agenda, attracting impact investors focused on sustainable development.

As in any other investment, there are some risks in investing in such investments. The primary concerns include market volatility and regulatory challenges, particularly in an emerging market like Kenya. Investors must navigate potential fluctuations in demand for housing and changes in government policies that could impact the real estate sector.

15. WITH GOVERNMENT INITIATIVES PRIORITIZING AFFORDABLE HOUSING AND REITS PLAYING A ROLE IN FINANCING THESE PROJECTS, WHAT ADDITIONAL STRATEGIES CAN REAL ESTATE STAKEHOLDERS LEVERAGE FOR CAPITAL RAISING, FINANCING, OR INVESTMENT USING REITS IN ORDER TO MAXIMIZE OPPORTUNITIES IN THE SECTOR?

First, they can focus on developing public-private partnerships (PPPs) that align government initiatives with private sector investment, utilizing REITs to

pool resources for large-scale housing projects. By integrating community-focused development plans with REIT structures, stakeholders can attract institutional investors who are increasingly looking for socially responsible investment options that provide steady returns while addressing pressing societal needs.

Additionally, incorporating innovative financial instruments, such as green bonds or impact funds within the REIT framework, can further appeal to environmentally and socially conscious investors. This approach can optimize capital raising efforts, ultimately maximizing investment opportunities in the affordable housing sector.

A structured use of monetizing offtake is also an ignored yet growing source of real estate financing. It has not helped that there were previous frauds before but new players are now able to show their legitimacy and track record in delivering allowing for efficient financing of Real Estate through offtake structuring for financing.



Contributor Information

IN CONVERSATION WITH:

FRANCIS NASYOMBA

*C.E.O and Principal
Raisin Capital Limited*

Francis is a CFA Charter holder and CPA with over 17 years of experience in accounting and financial investment, specializing in private capital and capital raising across Africa. He began his career at Deloitte and has since held key roles at TBL Mirror Fund, Centum Investments, and Agrivie, managing transactions across sectors such as agribusiness, healthcare, technology, financial services, and real estate.

As the CEO and Principal of Raisin Capital, an East Africa-based advisory firm, Francis oversees operations and capital-raising activities throughout the region. He is also the founder of www.capitalconnect.africa, an investor readiness platform. Outside of his professional work, Francis has interests in culinary arts and acting.





THE IMPACT OF LAND USE CHANGE ON TENURE SECURITY AND PHYSICAL PLANNING IN KENYA: BALANCING DEVELOPMENT AND RIGHTS



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Land is a crucial resource in Kenya, serving as the foundation for livelihoods, culture, and economic growth. As the nation grapples with rapid urbanization, agricultural intensification and infrastructural expansion, the changing use of land has implications for tenure security and physical planning. Land in Kenya can be categorized for various uses, including residential, commercial, agricultural, and industrial purposes. These categorizations are not arbitrary; they are designed to optimize the use of land in a manner that supports sustainable development and meets the specific needs of communities.

This article explores the relationship between land use change, tenure security and physical planning in Kenya, referencing existing legal provisions to highlight the current practices in balancing development and rights.

UNDERSTANDING LAND USE CHANGE IN KENYA

A change of user is a legal and administrative process that allows a landowner to alter the designated use of their land to align with their intended purpose. This process is crucial as it ensures that land use adheres to local planning and zoning regulations, which are designed to promote orderly development and prevent conflicts between different land uses.

For instance, if you purchase agricultural land with the intention of utilizing it for commercial purposes, you must

seek approval for this change of use. This process is governed by the Physical and Land Use Planning Act, along with its accompanying regulations on change of user. These regulations provide a comprehensive framework for the planning, use, regulation, and development of land.

PROCESS OF CHANGE OF USER

In Kenya, the change of user process involves altering the designated use of a piece of land, such as converting agricultural land to residential or commercial purposes. This process is crucial for accommodating urbanization, economic growth, and evolving community needs. Below are the key steps involved in this process.

Steps in the Change of User Process

- 1. Initial Assessment:** The process begins with the landowner assessing the need for a change of user. This may be driven by demand for new housing, commercial developments, or other infrastructural projects.
- 2. Consultation with Stakeholders:** Engaging with local communities and relevant stakeholders is vital. Public consultations are conducted to gather feedback, address concerns and foster community support for the proposed change. The proprietor must first start by advertising the intention to change the use of the land in two local newspapers of wide circulation. The purpose of

this advertisement is for public information and to invite any objections, oppositions and comments regarding the proposed change of user. If there are no objections after 14 days of advertisement, the proprietor may proceed to seek the services of a duly registered physical planner.

3. **Preparation of Documentation:** The land owner engages a physical planner to prepare a planning brief that will accompany the application for change of user, the Form PPA 1. The planning brief prepared by the physical planner should contain the development plan as well as particulars indicating the purpose of the development and Form PPA1 contains details such as the registered owner of the property as well as details of the property and its current use.
4. **Application Submission:** The formal application for change of user is submitted to the County Government's Department of Physical Planning for approval. If the property is agricultural, a Land Control Board Consent must be sought. This application includes all relevant documents, such as land ownership proof, report on feedback from the public, the payment receipt for the application, a sketch of the location and any other necessary assessments.
5. **Review by Authorities:** The application together with the planning brief is forwarded by the County Government within 30 days to the Director of Physical Planning and other relevant authorities such as the Land Control Board and the National Environment Management Authority (where an Environmental Impact Assessment is required). Upon consideration of the application for Change of user together with comments from the public and relevant authorities, the application is granted through Form PPA2.
6. **Approval or Denial:** Once the application is approved, the same should be forwarded to the Director of Survey and the Director of Physical Planning. The Applicant should procure the services of a valuer for purposes of determining the new Land Rates as per the new user and have the land re-surveyed for purposes of preparing a new deed plan or RIM. The Applicant is also required to surrender the old titles and the new deed plan/RIM to the registrar of titles who will process the new user. It is required that developments commence within 2 years from the date of approval.

If the application is denied, the Physical and Land Use Planning Act provides for an appeal avenue being; the Liaison Committee established under the Act and a further appeal to the Environment and Land Court.

7. **Implementation:** Upon approval, the landowner can proceed with the development according to the approved plans. This phase may involve obtaining further permits and adhering to specific conditions set forth during the approval process.
8. **Monitoring and Compliance:** After implementation, the local authorities monitor the development to ensure compliance with the approved change of user and any

environmental or zoning regulations.

TENURE SECURITY

Land tenure security refers to the protection of rights to use, manage, and transfer land. In Kenya, land tenure is governed by a combination of statutory laws and customary practices. Key legal frameworks include:

1. **The Constitution of Kenya (2010):** Article 40 guarantees the right to property, stating that no one should be deprived of their property without compensation. This constitutional provision is crucial for protecting tenure security amidst land use changes.
2. **The Land Act (2012):** The Land Act under Section 5 provides for various forms of tenure which are: freehold, leasehold, partial interests and customary land rights. This section was amended by section 42 of the Land Laws Amendment Act of 2016 to include that *"a registered proprietor shall not, for the purposes of obtaining planning permission, be obliged to surrender the freehold interest in exchange for leasehold."*

This amendment guarantees that during a change of use of land, the tenure of the land may remain as freehold except where the law requires otherwise. However, for leasehold properties, new practice has been that depending on the intended use, the term is reduced by the reviewing authorities. There is need for regulation or policy on whether, or when, the term may be reduced as this has been left to the discretion of the authorities.
3. **The National Land Policy (2009):** This policy aims to promote sustainable land management and equitable distribution of land resources. It recognizes the importance of customary land rights and the need for formalization to enhance tenure security.

BALANCING DEVELOPMENT AND COMMUNITY RIGHTS

To navigate the complexities of land use change and tenure security, a balanced approach is necessary:

- **Long-term Planning:** Effective land use planning requires a long-term vision that considers future growth and development needs. Integrating zoning regulations and land use policies into broader urban planning frameworks can help balance immediate demands with sustainable growth.
- **Enhanced Community Engagement:** Effective engagement with local communities during the planning stages of land use changes is essential. This can help identify potential impacts and foster collaboration.
- **Thorough Impact Assessments and Sustainable Practices:** Conducting environmental and social impact assessments before land use changes can help mitigate negative consequences. This practice aligns with the **Environmental Management and Coordination Act (1999)**, which mandates such assessments for development projects.

Development should prioritize sustainability, considering the long-term effects on the environment. Implementing environmental impact assessments (EIAs) allows for the identification and mitigation of adverse effects on ecosystems and biodiversity before changes are made.

CONCLUSION

The relationship between land use change, tenure security and physical planning in Kenya is complex, requiring careful consideration of both development objectives and community rights. By leveraging existing legal frameworks, stakeholders can work towards a more equitable balance which promotes inclusive practices and ensures sustainable development. The path forward lies in collaborative governance, where development initiatives respect and protect the rights of local communities.





INSURANCE OF SECTIONAL PROPERTIES IN KENYA



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INTRODUCTION

The Sectional Properties Act, 2020 (the Act), mandates the establishment of a corporation upon the registration of sectional plans (the Corporation). This Corporation is charged with various responsibilities as outlined in Section 20 of the Act. One of the primary duties of the Corporation is to insure and maintain insurance for the units, common property and other improvements on the parcel. This includes paying premiums for any insurance policies effected and performing any other necessary actions to fulfill their insurance obligations.

ANALYSIS OF THE INSURANCE OBLIGATION

The Corporation is expected to establish and maintain a fund for administrative expenses

sufficient to meet its obligations which includes payment of insurance premiums.

The Corporation is normally deemed to have an insurable interest for purposes of effecting an insurance policy. However, where the sectional plans have not yet been registered the developer is deemed to have an insurable interest in the property and is mandated to insure the units and the common property against the following:

- loss resulting from destruction;

- damage caused by fire;
- any damages awarded against the developer, the owner of a unit or the Corporation in an action for occupier's liability; and
- such other perils as specified in the by-laws.

Subsequently, once the sectional plans are registered, the insurable interest in the units and the common property transfers to the Corporation. If no insurance has been secured for the units and the common property, the Corporation is then obligated to obtain such insurance.

The Corporation may place insurance on the units and the common property or either of them against additional perils other than those specified in the Act or the by-laws and maintain such insurance on the units and common property as has been placed. Such insurance may be continued by the Corporation unless it is prohibited from doing so by a resolution passed at a properly convened meeting of the Corporation.

Any payment by an insurer under a policy of insurance for destruction of or damage to a unit or the common property shall, notwithstanding the terms of the policy;

- Be paid to the insurance trustee designated in the by-laws or, where the by-laws do not designate an

insurance trustee, to the Corporation

- Be used forthwith, for the repair or replacement of the insured property which was destroyed or damaged.

Notwithstanding the Insurance Act or any other insurance policy, where both a developer or a body corporate and an owner obtain insurance for the loss resulting from the destruction of or damage to the units or common property, the insurance arranged by the developer or the body corporate is considered to be primary insurance. This means that any insured claim will be paid out up to the sum insured by the developer or the body corporate without considering the potential insurance value. Conversely, the insurance arranged by the owner for the same property insured by the developer or the body corporate is deemed to be excess insurance. This means that the owner's insurance will cover the remaining costs only after the primary insurance coverage has been exhausted, typically up to a pre-agreed amount.

Section 39 of the Act provides a further obligation upon the Corporation to the effect that, within twenty days of receiving a request in writing from an owner or a person authorized in writing by an owner or the chargee of a unit, provide to the person making the request, subject to the payment of such charge as is prescribed in the by-laws, copies of the policies of insurance placed by the developer or the Corporation.

CONCLUSION.

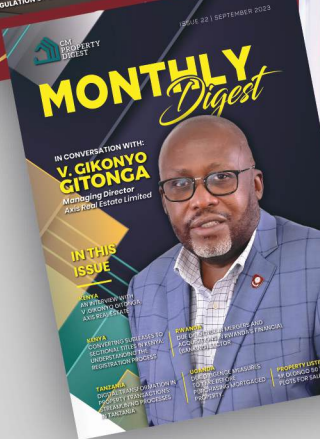
The Sectional Properties Act, 2020, places significant responsibilities on Corporations regarding the insurance of the units and improvements on registered parcels. Initially, the obligation to insure fell on the developer if units are sold without a registered sectional plan. Once the sectional plans are registered, this responsibility transitions to the Corporation, which must then maintain adequate insurance coverage for both the units and the common property.

The Act mandates that such insurance should primarily cover fire and may include additional perils as determined by the Corporation or by-laws. The insurance must be maintained unless explicitly prohibited by a resolution passed in a properly convened meeting. Importantly, any insurance payouts must be directed towards repairing or replacing the damaged property, ensuring the protection and continuity of the sectional property's integrity.

In scenarios where both the developer (or management corporation) and individual owners have secured insurance for the same property, the Act delineates the primary and excess insurance roles, ensuring that claims are handled efficiently and comprehensively. The Corporation is also obligated to provide copies of insurance policies to owners or authorized persons upon request, ensuring transparency and accountability in the management of sectional properties.



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AWARD-WINNING EXCELLENCE IN PROPERTY MANAGEMENT AND REAL ESTATE

The Property Boutique proudly clinches two prestigious recognitions in 2024: **The Real Estate Excellence Award for Best Property Managers & Agency** and **The Excellence Award** from Grosvenor Residencies for strategic partnerships. These accolades affirm our unwavering commitment to delivering top-tier property management solutions tailored to meet the diverse needs of property owners across the region.

Our award-winning management team ensures that properties are expertly maintained, providing peace of mind to both landlords and tenants. Whether you're a seasoned investor or a first-time homeowner, we manage your assets with the highest level of professionalism and attention to detail.

In addition to our property management services, we're thrilled to showcase our strategic partnership with Grosvenor Residencies, who have entrusted us with their prestigious development. Currently on offer are luxurious 1 and 2-bedroom apartments in the heart of Westlands. These modern apartments, starting at Ksh 9M for a 1-bedroom and Ksh 12.5M for a 2-bedroom, are perfect for those seeking an elegant urban lifestyle or a prime investment opportunity. With features such as high-speed elevators, a heated pool, fully equipped gym, and rooftop panoramic views of Nairobi's skyline, Grosvenor Residencies redefines luxury living.

Ready to own a piece of this exclusive property? Reach out to The Property Boutique today and let us guide you in securing your dream home or investment.




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STRATEGIES FOR REAL ESTATE COMPANIES TO EARN CARBON CREDITS



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According to a study conducted by the United Nations, the real estate sector is responsible for about 38% of the world's energy related carbon dioxide production and emission. Pursuant to the Paris Agreement, countries agreed to put in efforts through nationally determined contributions to limit temperature increase to 1.5 degrees Celsius. Kenya, through its updated nationally determined contribution seeks to abate greenhouse gases by 32% by 2030.

To achieve this goal Kenya has implemented various mechanisms among them carbon trading through which real estate companies can contribute to global climate change mitigation efforts, while also earning carbon credits.

Carbon credits are permits created when one metric tonne of carbon dioxide is sequestered or prevented from entering the atmosphere. Carbon credits are traded in carbon markets which are categorized as being voluntary or regulated carbon markets. Voluntary carbon markets are based on wilful or voluntary participation where entities purchase carbon credits to offset their emissions voluntarily. Regulated carbon markets on the other hand are structured to ensure entities comply with mandatory

compliance and operate on a cap-and-trade system where a regulatory cap is set on emissions and the allowances thereby are traded among the entities.

LEGAL AND REGULATORY FRAMEWORK

The Carbon Markets Regulations which came into force in May 2024 provide a legal framework for the governance and oversight on carbon credits and trading. The National Environment Management Authority (NEMA) is the designated national authority in charge of the carbon markets and is responsible for approving carbon projects in Kenya.

HOW CAN REAL ESTATE COMPANIES EARN CARBON CREDITS?

Real estate companies can earn carbon credits by incorporating sustainability throughout the project lifecycles. By prioritizing sustainability strategies and entrenching Environmental, Social and Governance (ESG) factors at the concept stage and throughout the project lifecycle. Real estate projects that embed strategies for carbon removal or sequestration are eligible to be regarded as carbon projects upon submitting an application to NEMA.

Real estate companies can generate carbon credits through sustainable practices which include:

a. Implementing a decarbonization strategy at the project concept stage

Incorporating decarbonization strategies at the design and planning stage is crucial as all parties involved gain an understanding as to the end goal. Thus, right from the architectural design stage, sourcing of materials, transport planning, the experts involved buy into and share the goal of the developer from the outset.

b. Implementing sustainable building practices

Real estate companies can adopt standards such as the Kenya Green Building Code while undertaking building projects in order to enhance energy efficiency, reduce waste thereby minimizing environmental impact. Projects designed to this standard can significantly reduce carbon emissions thus the project can be a viable carbon credit project.

c. Materials efficiency

Reducing the use hard to abate materials such as iron, steel and other petrochemicals which present a difficulty in trying to decarbonize. As such, it is important for developers to reduce the use of such hard to abate materials for alternatives that would be easier to decarbonize. Real estate developers who would want to earn carbon credits should utilize renewable or recycled materials such as sustainable forests or wood, bamboo among others which can significantly reduce the construction carbon footprint.

d. Utilizing innovative technology

Real estate companies aiming at earning carbon credits should utilize and deploy innovative technology which can significantly reduce the emission of greenhouse gases and general energy waste. Smart building technology as well as technology that utilizes lower carbon alternatives to fossil fuels translates to reduced emissions which can be accounted for in carbon credit calculations.

e. Undertaking renewable energy projects

The building and construction sector can benefit from undertaking renewable energy projects and also utilizing renewable energy such as wind, solar and hydropower which would be efficient in reducing the emission of carbon dioxide to the environment thereby enabling the project to be viable for carbon trading. Entities that invest in these alternative energy sources can earn credits while promoting sustainable energy use.

f. Enhancing indoor environment

Real estate companies involved in building and construction can enhance the indoor environment by integrating optimal

building orientation for natural light and energy efficient HVAC systems. This will ensure the maximisation of natural light, proper ventilation and avoiding the use of materials with unnecessary carbon emissions thus rendering the project to be eligible for carbon credits.

g. Decarbonizing the supply chain

This involves screening to ensure that the entire supply chain embeds sustainability right from the extraction or production of the raw materials, transportation of the raw materials, project implementation which includes activities such as construction or manufacturing. This also calls for real estate companies to engage strategic suppliers. Noting that the final product or project is as a result of many integrated processes, there is need to ensure decarbonization all through to certify the final product as green. Cumulatively, real estate developers can thus claim carbon credits for the lowered overall carbon footprint.

h. Undertaking afforestation and reforestation projects

Real estate projects can incorporate green spaces within their projects which is a move towards carbon sequestration. Collaboration with local communities, non governmental organizations and government agencies to manage forests sustainably in a bid to avoiding deforestation and promoting land use practices can also enable them to generate carbon credits.

ADDRESSING CHALLENGES FACED BY REAL ESTATE COMPANIES IN THE JOURNEY TO EARNING CARBON CREDITS

Real estate companies navigating carbon credits and trading encounter a myriad of challenges including resistance and lack of stakeholder buy in. To this end real estate companies should undertake to involve the local communities and stakeholders involved in the project by informing them of the benefits of the activities they are undertaking while also taking in feedback.

High costs of undertaking renewable energy projects as well as utilizing renewable energy and sourcing for materials as compared to the traditional materials and sources of energy can be a hindrance. Real estate developers can explore green finance options which offer lower interest rates unlike traditional finance options while also focusing on the lower operational cost over the building life cycle.

Navigating regulatory complexities also poses as a challenge. It would be crucial for real estate companies to engage experts in the field who understand the legal and regulatory environment. Joining industry associations would also be important as they present avenues for support in navigating the regulatory landscape.

Supply chain challenges and unavailability of information and sustainable materials also hinder sustainability efforts. Difficulty in assessing ethical practices throughout the supply chain is common. These challenges can be addressed through increased stakeholder engagement, information sharing, and fostering transparency across the supply chain.

CONCLUSION: KILLING TWO BIRDS WITH ONE STONE

The real estate sector remains pivotal in shaping environmental change and achieving the country's set NDC goals. Carbon credits present the opportunity for real estate companies to participate in the greater good for the environment while generating additional revenue while at it. In addition, real estate firms can enhance their reputation and marketability by investing in green building practices thereby attracting higher returns and consumer loyalty from eco-conscious consumers.





UNLOCKING THE BENEFITS OF THE 15% TAX REBATE FOR DEVELOPERS



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In Kenya, real estate developers who construct at least 100 residential units annually may be eligible for a generous 15% Corporate Tax rebate. This incentive, outlined in Paragraph 2, Head B of the Third Schedule to the Income Tax Act, aims to encourage property development, and its application extends to all developers—not just those focused on affordable housing. However, this rebate isn't automatic; it requires approvals from both the Cabinet Secretary for Housing and the Cabinet Secretary of National Treasury.

For developers seeking to access this tax relief, several documents are essential. The key project-related documents include:

- A detailed project profile, indicating the timeline, number of units completed and sold, and proof of all relevant approvals.
- An Occupation Certificate from the county government.
- Sale and transfer documents for each unit.
- Title or parcel numbers of the development site, and certified copies of Nairobi City County approvals.
- Additional supporting documents like floor plans, project location coordinates, ground surveys, and profiles of the consultants involved in the project.

These requirements ensure transparency and safeguard the government's tax collection process while rewarding developers who meet the set standards.

CHALLENGES AND BEST PRACTICES

Navigating the 15% Corporate Tax rebate offers a substantial incentive for real estate developers in Kenya, but the path to securing this benefit can be challenging. The process requires approvals from the Cabinet Secretary for Housing and the Cabinet Secretary for National Treasury, both of which can be intricate and time-consuming. Several hurdles are common, with one of the most frequent being incomplete documentation. Developers often encounter delays when vital project documents are missing or inaccurate. To avoid such setbacks, it is crucial to ensure that all required records are complete and accurate from the start.

Bureaucratic delays also present challenges. Obtaining the necessary approvals can be prolonged, so developers are advised to engage with government authorities early and maintain open communication throughout the approval process.

REVENUE RECOGNITION FOR REAL ESTATE DEVELOPERS

In the world of real estate, revenue recognition is another crucial aspect especially when it comes to financial reporting, and is particularly relevant for developers engaged in off-plan sales or phased payment plans. Contrary to popular belief, receiving deposits from buyers does not translate to revenue being recognized immediately. Instead, revenue is only recognized when the developer hands over the completed units to the buyer, following a transfer of significant risks and rewards of ownership.

This practice aligns with International Accounting Standard (IAS) 15, which stipulates that revenue can only be recognized if five key conditions are met.

1. The developer must have transferred control of the units to the buyer without retaining managerial control,
2. the revenue amount must be reliably measurable, and the economic benefits from the sale should flow to the developer.
3. Lastly, the costs related to the transaction must be measurable as well.

A landmark case, *Longnot Gate Developers vs Commissioner Domestic Taxes [2015]*, underscores the importance of proper timing in revenue recognition. In this case, the Tax Appeals Tribunal emphasized that mere signing of a Letter of Offer or purchase contract does not amount to revenue being earned. These agreements are viewed as expressions of intent, with revenue realization happening only when both parties fulfill their obligations under the contract. The Tribunal's reasoning was straightforward—if a developer failed to deliver on their promise, they would be required to refund the deposits paid by buyers, confirming that such deposits should not be taxed prematurely.

For developers, understanding the intricacies of tax incentives and revenue recognition makes a significant difference, ensuring compliance while maximizing financial benefits. By adhering to these guidelines, developers can take advantage of opportunities like the 15% tax rebate while maintaining accurate financial reporting.





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REGULATING INFORMAL SETTLEMENTS: BALANCING DEVELOPMENT AND RIGHTS.



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Informal settlements often present as forms of temporary or makeshift or slum dwellings that tend to be illegally built or set up without the authority or permission of the owner of the land they located in. They are often found within urban areas on the outskirts of affluent neighbourhoods or industrial areas of major towns and cities. They go by other names such as slums, favelas or ghettos in developing countries. In the developed world they are known as the projects which often refer formalized or government subsidized housing or settlements that started out as informal settlements.

In Kenya informal settlements are common in major towns for instance the famous ones are across the Muthaiga estate that is the Mathare slums, near Langata estate there is Kibera slums (the largest informal settlement in East Africa) and near industrial area in Nairobi there is the Mukuru slums. Most of the residents in these informal settlements are people who work in the informal or Juakali sector as factory workers, cleaners, domestic managers in the homes of the people residing in the affluent estates and other low cadre jobs. The dwellers in these slums tend to be trespassers on either private and/or public land.

In rural areas the informal settlements spring up in private or public land and the settlers here are squatters who tend to put up permanent and semi-permanent structures for housing purposes. Most residents in informal settlements

are landless, illegal settlers, trespassers and tend to be squatters in the occupation of either private, public or government and/or community land.

There are two categories of informal settlements the UN Habitat has classified and apply world over;

- a. Squatter settlements-where land and/or buildings have been occupied without the permission of the owner.
- b. Illegal land developments-where initial occupation is legal but where unauthorized land developments have occurred.

EXISTING EXTRA-LEGAL AND LEGAL FRAMEWORKS FOR REGULATION OF KENYAN INFORMAL SETTLEMENTS

a. Extra-Legal Frameworks for regulating Kenyan Informal Settlements

In most informal settlements the residents obtain land tenure rights through invasion, inheritance and/or illegal purchase of land.

In Mukuru Kwa Njenga Slums the Local chief, village elders and the land cartels play various extra-legal roles in controlling the registration, development and alienation of informal settlements parcels of lands.

The local chief in cahoots with the local land cartel controls

the sale and allocation of plots in the informal settlements. Interested purchasers of land within Mukuru make inquiries about plots or spaces that are up for sale from the local chief and/or the local youth group and/or land cartel.

The Local chief queries the background of the potential new squatter/occupier, prepares a sale agreement to be executed and witnessed between the parties, and once payment is made and the local chief receives his cut of the proceeds, he issues the new squatter/occupier with a document of purported ownership of the allocated section or parcel of land within the settlement.

The Chief and the land cartel in return guarantee the new squatter/occupier protection of their land right within the slum.

The village elders together with the local chief are tasked with keeping records of the squatters/occupiers within the settlement.

The village elders keep look out for any new Development in the settlement and inform both the local chief and land cartel. No development is done without the approval of the land cartel and any attempts to do so will result in demolition of the structure.

The local chief and village elders are the adjudicators of any land disputes that arise within the slums while the land cartel and/or local youth group are the law enforcers of any verdict that is arrived at upon after the adjudication process. This extra-legal regulation of informal settlements has enabled them to sustain themselves and their inhabitants in a peaceful manner, spur inadequate development within the slums while at the same time infringe upon the landowners right to property often and regularly.

Private landowners in most instances are either forced to negotiate with these land cartels and squatters in a bid to reclaim part of their land or buy back the areas of the settlements from them. In the Waitiki Farm saga, the owner had to negotiate with both the National and County government to be able to part with the entire farm. The National government played a vital role in aiding the redress of squatters on the 930 acres farm which was private land that Mr. Evanson Waitiki had bought in 1975. He was forcefully evicted from the same by squatters during the 1997 Likoni land clashes where squatters invaded his farm and put up informal settlements, subdivided them and sold them among themselves and others.

Is there a balance for development and rights under this framework for regulation of Kenyan informal settlements?

The answer is no. There is no balance because significant development cannot take place under this framework whereby the rights of the individual or actual owner of the land where the settlement is located, are infringed upon. This framework only fosters the proliferation of slums and

other informal settlements while increasing crime rates both within and outside these informal settlements.

The only balance that one can observe is that with the informal settlements where there is some semblance of purported law and order as seen in Mukuru kwa Njenga slums, the government can identify squatters who can benefit from the formalization of their informal settlement scheme and therefore have access to their beneficial ownership of the land they occupy based on legal ownership which the government recognizes.

b. Legal Frameworks for regulation of Kenyan informal settlements

Over the years Kenya has made several concerted efforts to regulate/control and prevent the mushrooming of more informal settlements through various legislations and case law that have aimed to balance the landowners' rights to property and development and the squatters/ informal settlers' rights to housing. The following statutes and laws have and will play an extensive role in regulating informal settlements:

I. THE CONSTITUTION OF KENYA 2010

Apart from article 40 which protects one's right to property in terms of acquisition, ownership, description and location article 43(1) (b) also enshrines every Kenyan's right to accessible and adequate housing, and to reasonable standards of sanitation as part of the economic and social rights that Kenyans are guaranteed under the current Constitution. Parliament has enacted several statutes to qualify and entrench these rights further.

Article 60 to 67 of the current Constitution provides the overall legal land regime in Kenya is enforced and provides for further establishment of Laws and bodies that aid in the regulation of informal settlements. The National Land Commission is one body that plays a role in the regulation of informal settlements in Kenya.

Article 162 (2) (b) provided for establishment of Courts that handle environment and land disputes. This is important in the regulation of informal settlements and in particular balancing of developments and rights.

II. LAND ACT AND LAND REGISTRATION ACT

These Acts are an extension and enforcement of article 40 of the current Constitution. They deal with the various types of land in Kenya, types of Land tenure, the interests that can be held because of these land tenures, the types of registrable interests in land, procedures of registration and conversion of the various interests and land tenures. In relation to regulation of informal settlements there are several mechanisms that can be used to regulate informal settlements and convert them to formal settlements such as

- Adverse Possession
- Outright land purchase and transfer from the actual

- landowner
- Transmission

III. NATIONAL LAND COMMISSION ACT AND COMMUNITY LAND ACT

These are further extension and enactment of both article 40 of the current Constitution. The National Land Commission Act establishes the Commission that plays a vital role in the management of Public Land on behalf of the National and County governments. In relation to regulation of informal settlements, the Commission through its role of investigations into historical land injustices has managed to regulate and recommend conversion of informal settlements into formal settlements with its inhabitants being given legal documents of ownership. The Commission plays a key role in the regulation of informal settlement in balancing the development and rights.

The commission played a key role in aiding the formalization of the Waitiki farm informal settlements through the acquisition of the said private land from the owner Mr. Evanson Waitiki for the benefit of and resettlement of the squatters within.

The Community Land Act which was enacted in 2016 also plays a role in the regulation of informal settlements in according land ownership rights to groups of people who are the indigenous inhabitants or settlers of land that is yet to be registered. These people have the right to register their community group and thereafter register their community's interest in the land they already occupy.

These statutes play a major role in settlement of landless people and groups from informal settlements to formal settlements and community settlements. The two statutes provide a balanced control of development and rights in informal settlements in Kenya.

IV. SECTIONAL PROPERTIES ACT AND AFFORDABLE HOUSING ACT NO.2 OF 2024

The Acts are both extensions of article 40 and 43(1)(b) of the Constitution of Kenya. These Acts are further testament to the regulation of informal settlements- the balance of development and rights. The two work well together being extensions of constitutional rights.

The Sectional Properties Act controls and minimize the formation informal settlements thereby protecting the landowners right to enjoyment of his property especially in urban areas at the same time spur individual landowners to develop their properties for sale of individual units through erection of apartments or flats all capable of issuance of sectional titles preventing invasion and encroachment of their land by squatters while benefiting previously homeless or landless people.

The Affordable Housing Act was enacted earlier this year to aid in the government role out in enacting article 43(1) (b) the economic and social right to accessible and adequate

housing. This is the main regulator of informal settlements that aims to minimize or put an end to slums or informal settlements in Kenya. Both levels of government in Kenya are now working and commencing affordable projects and completing previous affordable housing projects from the previous governments to guarantee thousands of homeless owners and those who previously owned or resided on public land government housing a chance to own homes.

V. THE ENVIRONMENT AND LAND COURT ACT

The Act establishes the said Court which plays a vital role in the regulation of informal settlements while balancing development and rights. The Court has jurisdiction to handle disputes relating to land disputes which involve private, public and/or community land, disputes in compulsory land acquisition, disputes in land administration and management. The dispute resolutions in the aforementioned areas show the Court plays a vital role in regulation of informal settlements and balancing of the rights of landowners to develop vis-a-vis the rights of squatters or informal settlers to housing.

Is there a balance for development and rights under this framework for regulation of Kenyan informal settlements?

The Answer is in the affirmative. Yes, there is a balance of development and rights under this framework for regulation of Kenyan informal settlements.

In the Judgment of **Nairobi ELC No. 1257 of 2014-John Otieno Obade and 299 Others –versus-Teresia Wairimu Kirima (O.S) and another consolidated with 6 others** (hereinafter referred to as "Gerishon Kirima case) The Environment and Land Court while acknowledging that some of the Respondents who had invaded the Applicants /representatives of the Estate of Gerishon Kirima owner of land in Njiru area within Nairobi county did not have any registrable interest in land and their claim for adverse possession failed the Court gave them the equitable option of leaving the suit parcels of land within a two month period of delivery of the Judgment and for those who had begun the process of acquiring land through sale from the estate of Gerishon Kirima were ordered to finalize payments and pay land rates on a pro rata basis. This was a win-win situation which provided development for land that had not been developed for residential and commercial purposes while also ensuring the Estate of Gerishon Kirima benefits from the ownership and sale of portions of their land at Njiru area.

The Affordable Housing Act no.2 of 2024 is a direct address on the issue of informal settlements as it seeks to have all Kenyans to become homeowners which is one of the reasons why informal settlements shall reduce with time and after appropriate remedies to various provision in the said Act are implemented. The provisions concerning the housing levy should be done away with or reduced and/or applied across all able-bodies Kenyans apart from the salaried and/or businesspeople or seek other avenues of

revenue collections for the same. The Act has targeted Kenyans with various income levels for purposes of levying them for funds to facilitate funding for affordable housing projects. The lowest income earners targeted for levying of their income are those of Kshs.20,000/= and below while the highest targeted are the ones earning Kshs.140,000/= and above. This is still too low for a country why those earning Kshs.100,000/= and above are only 3% of the population as of 2020. The Affordable Housing Act will only benefit a few people in its current state considering only a low percentage are contributing towards making affordable housing a reality.

The Land Act sections 152B to 152H has provided for eviction as a remedy to trespass, eviction procedures and reliefs. The law emphasizes humane and dignified eviction of squatters. The implementation of this law is still poor as we had the case the Ruai and Kariobangi evictions which were notoriously done in the early morning hours putting out families in the cold after forceful eviction and demolitions.

The legal framework has attempted to balance development and rights while regulating informal settlements but there is still room for improvement and implementation of further measures together with implementation of existing Laws to regulate informal settlements while balancing development and rights.

RECOMMENDATIONS FOR FURTHER REGULATION OF INFORMAL SETTLEMENTS WHILE BALANCING DEVELOPMENT AND RIGHTS

1. Implementation of Article 68(c)(i) enactment of legislation prescribing the maximum and minimum land holding acreages in respect of private land.

This would guarantee more land to the settlers or squatters within informal settlements. The history of land ownership in Kenya shows that implementation such a law is almost a pipe dream considering most of the prominent and influential people in government own huge tracts of land. The situation, however, may soon become a reality as the same individuals fail to utilize all the land they own and/or possess, which then prompts landless people to invade and set up informal settlements.

2. Implementation of Article 68(b) that is Parliament to revise sectoral land use laws in accordance with the principles set out in Article 60(1) among which are

- a. equitable access to land;
- b. security of land rights;
- c. sustainable and productive management of land resources;
- d. transparent and cost-effective administration of land;
- e. sound conservation and protection of ecologically sensitive areas;
- f. elimination of gender discrimination in law, customs and practices related to land and property in land;

encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution.

3. Drafting of an Eviction and Re-Settlement Bill or amendment of existing laws to provide for Resettlement procedures prior to eviction and after national disasters.

The National Assembly's failure to implement a similar Bill in 2012 was detrimental to the plight of informal settlers. The Kenyan informal settler will always be landless unless they are able to afford land or houses under the Affordable Housing Act. The Land Act was amended in 2016 to provide for humane and dignified eviction procedures. Resettlement of internally displaced persons should take priority and be done prior to eviction for the full implementation of article 43(1)(b) in the spirit and letter of the law. The current Land Act and National Land Commission Act should be amended to include provisions for resettlement procedures and enhancement of resettlement powers respectively.

4. Development of the Land Court's jurisprudence for implementation of equitable resettlement rights for persons affected by evictions.

In the Kenyan Courts the Gerishon Kirima case provided for equitable eviction procedures but failed to propose resettlement solutions in contrast the South African Courts in *J'vloederkfip Boerderij (Ply) Ltd v Madder East Squatters and another 2001 (4) SA 385 (W)* ("the eviction case"); which forced the government to be involved in providing alternative resettlement land before issuing eviction orders. This will regulate informal settlements while balancing development and rights.

5. Parliament should enact laws or amended existing laws with provisions that provide for the adaptation and formalization of existing Informal settlements.

The Land tenure, land ownership record systems and land use systems found to be useful, fair and just should be adopted for the formalization of the settlements either through amendments of the Community Land Act or enactment of new acts after understanding these systems especially if the settlement land involves public land.

6. Amendment of the Affordable Housing Act to provide for inclusion of all income cadres

while providing equitable contributions from all earning and income levels. This will further guarantee regulation of informal settlements through reduction of the same and balancing of development and rights.

CONCLUSION

The hope lies in concerted efforts from all the relevant stakeholders to uphold the law and implement them fully to prevent the proliferation of informal settlements and have an even balance between development and rights of the squatters and the landowners.

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