

The Role of Professional Bodies in Formulation of Government Policy Through Research.

(A case Study of the Institution of Surveyors of Kenya's Research on Devolved System of Governance)

Winnie MWANGI-NYIKA & Eunice MACHARIA, Kenya

Key words: Professional Bodies, Devolution, Research, Land Management

SUMMARY

Professional bodies play a key role in the formulation of laws and policies and assist in other decision making as key stakeholders of those decisions. Landed professional bodies like Institution of Surveyors of Kenya (ISK) deal with; land reforms advocacy, land resources knowledge advancement and regulation of the practice in the disciplines of surveying. In the last few years, Kenya, as a country, has gone through a transformation in governance that saw the promulgation of the Constitution of Kenya in August, 2010. One of the key principles in the Constitution is involvement of the Citizenry through participation and consultation. This, the Constitution envisages can only be achieved through a devolved system of governance. In 2009, Kenya got its first Land Policy under Sessional paper No 3, whose main object was to identify the areas in the Land Sector that were in need of reforms. The policy identifies centralized systems of land administration as one of the key challenges facing land administration thus making the service delivery inefficient and ineffective. Land sector, so as to address the problems and in conformity with the constitution has embarked on formulation of new legislative and institutional frameworks. ISK has played a key role in research, advocacy, and participation in committees and forums that developed the new laws and by actively engaging the policy makers in different forums. It is in this context that ISK, with the support of their partners, commissioned a research whose objectives were to document the best practices on decentralization of land administration systems with a view to recommending a suitable model. This study was carried out between December 2011 and January 2012 in Narok County, which is one of the 47 counties in Kenya. The County was chosen due to its heterogeneous land ownership and registration regimes. The study was qualitative due to the nature of the subject and then subjected to professional interpretation to form objective position. Data was collected through the use of standard research instruments namely questionnaires administered to both state actors and non-state actors, and focus group discussions. Secondary data included analysis of case studies from countries where decentralization of land administration has been done. The study found that, decentralization of land administration mainly takes two forms, that is, deconcentration and devolution. It also found that, devolution of land administration is a continuous process whose success will be guided by tasks, budget, capacity and good will of all stakeholders. This study recommended a devolution relationship model, where both deconcentration and devolution are adopted depending on the legislated institutions and the tasks to be undertaken.

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1. INTRODUCTION

People's capacity to construct a livelihood and overcome poverty in a country like Kenya, is greatly influenced by their *effective control* over productive resources such as land. This is so, because, as Borrás and Franco (2007:2) correctly note, in many developing nations like Kenya, land is still a significant contributor to the income of the populace since a major portion of their income comes from "[...] farming or farming related activities, despite far reaching livelihood diversification processes that has occurred in different places over time." The centrality of land in people's livelihoods in Kenya means that, land continues to enjoy the keen attention of the central and local governments (Benjaminsen and Lund, 2003:1). The governance systems and practices that have been used by the government for purposes of land management and administration can best be described as fused, personalized and highly centralized resulting in poor delivery of land administration services. To remedy this, and in line with the Constitution, a decentralized governance system has been proposed as the most suitable mode of governance through which improved land administration can be achieved and poverty reduction interventions implemented. Broadly understood "decentralization is any shift of responsibility to local government or other local institutions" (Bruce and Knox, 2009:1362), however, for purposes of this paper decentralization should be seen as a concept embodying devolution, deconcentration, delegation and delocalization. This paper focuses on decentralization of land administration services.

2. OBJECTIVES AND METHODOLOGY

The objectives of the research were;

- a) To document the best practices on devolution systems and model on land administration globally
- b) To identify the issues within Narok County that would benefit from a devolved system of governance
- c) To recommend a model that integrates all players and categories of land within Narok County with possible replication

The study was primarily qualitative, implying "[...] an emphasis on the qualities of entities and on processes and meanings that are not experimentally examined or measured (if measured at all) in terms of quantity, amount, intensity or frequency" (Lincoln and Denzin, 2000:9). The methodology adopted here therefore "describes the nature of answers in terms of their verbal, written, word or other descriptive nature" Laws et. al (2003: 28), as it is hinged on the belief that rich descriptions of socially constructed nature is paramount, an important observation for a study concerned with land and land relations. This approach,

“uses purposive sampling and semi-structured or interactive interviews to collect data – mainly, data relating to people’s judgements, attitudes, preferences, priorities and/or perceptions about a subject – and analyzes it through sociological or anthropological research techniques.” (Gilbert 2005:141).

For purposes of this study, data was collected through the use of standard research instruments namely questionnaires administered to both state actors and non-state actors, and focus group discussions. The targeted state actors included District Commissioner, District: Land Adjudication Officers, Surveyor, Physical Planner, Registrar and their deputies. The targeted non- state actors included NGOs, CBOs, local politicians/opinion leaders, professional organizations and members of the public who seek land administration services from the various offices. A total of 40 questionnaires were administered to the above identified respondents with the response rate being 50%. It is important to mention that, the total number of respondents involved in this research depended a great deal on the available resources. To get a comprehensive and wide view of the pertinent issues of the current land management and administration system vis-à-vis the envisaged decentralized, the research team engaged the different respondents and other interested parties, in an open small public barazas i.e. focus group discussions. The discussions raised pertinent issues which the questionnaires did not really raise.

Secondary data collection involved searches on literature and policy documents on land reforms, land administration and decentralized systems of governance. This was accomplished through review of journals, scholarly works and other documented experiences on land in the aforementioned concepts. Legislations dealing with land administration were also be looked at.

3. UNDERSTANDING DEVOLUTION AS AN ELEMENT OF CENTRALIZATION

As aptly introduced, the term decentralization is a multi-faceted generic concept that includes elements such as devolution, deconcentration, delegation and delocalization. As a result, any decentralization policy will most likely comprise dozens of each. Decentralization covers a number of concepts that include the following: **deconcentration** – the process of administrative decentralization whereby the central government designs a structure that enables its agents to work close to the local people in field units/ agencies of central government; **delegation** – the transfer of responsibilities from central government to semi-autonomous bodies that are directly accountable to the central government; **devolution** – the process of transferring decision making and implementation powers, functions, responsibilities and resources to legally constituted local governments; **delocalization** – the spatial distribution of central government socio-economic development facilities and activities such as schools, hospitals etc in peripheral regions

Since its entrance in the policy agenda arena in the 1990s, decentralization has been a critical component of any governance reform strategy. The norm in these reforms has been the “[..]transfer of management, responsibilities and powers from the central government to a variety of local institutions.[...]” (Ribot 2003:53). However, as Bruce and Knox (2009:1361)

argue “decentralization is not simply a matter of what powers will be devolved to local authorities, but of *actual legitimacy* and *power* of the various institutional actors at the local level.” According to Kauzya (2007) a successful decentralization reform process should embody both vertical and horizontal decentralization where **Vertical decentralization** refers to transfer of power and authority from central to local government and **Horizontal decentralization** empowers the local communities and enables them to receive and utilize the powers that are transferred to them especially in problem analysis, priority setting, planning, and constantly demanding accountability from their local and national leadership or any governance actor at the local level. The Success of decentralization depends on whether the three dimensions of decentralization have been embraced. These three are; **Fiscal** which involves (i) allocation of expenditure responsibilities by central and local tiers of government (ii) assignment taxes by government tiers (iii) the design of a intergovernmental grants system (iv) the budgeting and monitoring of fiscal flows between different government tiers. **Institutional Decentralization** which is concerned with the critical institutional architecture on which decentralization is built. This in essence refers to the administrative bodies, systems and mechanisms, both local and intergovernmental, which help to manage and support decentralization. As Smoke (2003:10) also notes it also includes “[...]mechanisms that link formal government bodies to other key local actors” such as the traditional authorities, private sector and the civil society. **Political Decentralization** – this implies the need for an inclusive local political process. According to Kauzya (2007:4&6) it refers to both ‘*voice* and the *vote*, and essentially leads to an enhancement of the influence of local people on the decisions that concern them’.

4. DEVOLUTION AND LAND ADMINISTRATION

Before proceeding onto the decentralization of authority over land administration and its various components this paper would first like to clearly and unambiguously set out what it means by land management and administration. Simply defined land management encompasses “[...]all the activities associated with the management of land as a resource, from both an environmental and economic perspective, towards sustainable development” (Burns 2007:4). As a process it underpins “[...]the distribution and management” of land which is one of society’s key asset. The main aim of land management -especially its central land administration- is to “[...]deliver efficient land markets and effective management of the use of land in support of economic, social and environmental sustainability” (Deininger and Enemark, 2010:xviii)¹. Land Administration on the other hand, “Land administration is a basic tool that supports land management and operates within the framework established by land policy and the legal, social, and environmental background of a particular jurisdiction” (Deininger and Enemark 2010:xviii). Land administration may be defined as “[...]the processes of determining, recording, and disseminating information about tenure, value and use of land when implementing land management policies.” Land rights registration, surveying and mapping of boundaries extent make up the core land administration functions which are primarily the premise of the state/public sector.

A typical land administration system will be comprised of an information system that define rights and/or information, and spatial records that define the extent over which these rights

and/or information can be exercised. It may include the following aspects;

- a) Management of public land
- b) Recording and registration of private rights in land
- c) Recording, registration and publicizing of the grants or transfers of those rights in land through e.g. sale, subdivision, consolidation
- d) Management of the fiscal aspects related to rights in land, including land tax, historical sales data, valuation for a range of purposes, including assessment of fees and taxes and compensation for state acquisition.
- e) Control of the use of land, including land use zoning and support for the development application/approval processes.

Thus as seen above, land administration is mainly a concern of the state, as it is the state that maintains the public infrastructure needed to support and protect a system of private, public and community property rights in land. The state organs may be inform of central government, local government or recognized community structures. Besides institutional framework, legal framework must also be put in place to support the devolved system of governance. In the case of Kenya, new land laws have been enacted which embody the spirit of devolving land administration and management services in the country. Amongst them are, The National Land Commission act 2012, The Land Act 2012, The Land registration Act 2012 and the Urban and Cities Act 2011. It is the view of this paper that, given a proper legal and institutional framework, it is possible to decentralize the land administration aspects identified above thus achieving greater efficiency in land administration.

5. THE CASE STUDY

Narok County whose capital is Narok Town is one of the 47 delimited counties in Kenya. Its located about two and a half hours drive to the south west of the City of Nairobi. Being in the South Rift Valley and North of Tanzania, it borders six counties, namely: Nakuru to the North; Bomet, Nyamira and Kisii to the North West; Kajiado to the South East; and Migori to the West. The county's two main towns are Narok Town in the North and Kilgoris in the South (Trans-Mara Region).

Figure 1: Kenya Counties Map



Source: www.mapsoftheworld.com

6. FINDINGS

This section is primarily based on the focus group discussions held at Narok South District Commissioner office, researchers' observation and questionnaires administered to the various Narok land sector stakeholders. Through this data collection methods, the research team was able gather information on: the current land tenure situation in Narok county; land administration services sought for in the land offices at the County; the understanding of the envisaged decentralization by the County's members; potential benefits of land administration services decentralization and potential challenges to the effective decentralization of land management and administration. Each of these aspects is covered in detail below.

6.1 Situation Analysis of Types of Land Tenure in Narok County

Land tenure types in Narok include: Community land -under the current legislative

framework includes registered group ranches-; private land; and trust land in areas where land has not been adjudicated. Group Ranches Management hold the land and manage it on behalf of the community members. Currently, there is a rush to dissolve the remaining group ranches, to give way for subdivision and private land title ownership.

6.2 Challenges Faced by the Emerging Land Tenure Evolution

With the dissolution of group ranches, population increase and the rising demand for individual land tenure, a number of challenges to the emerging land tenure types are evident. These challenges as gathered from the field include: Resistance to the change in way of life and livelihood construction which are both primarily pastoral – nomadic; The change to individualization and agricultural crop production may restrict free movement. Increased human-animal conflict due to the increased land individualization and rising population growth amongst the pastoralists.; Secretive and incoherent sales of land following the notorious land subdivisions by local individual owners which may result in landlessness and poverty; and conflict over the imbalances in sharing group land, parcel sizes, position of parcels owned within the heterogeneous land uses. In addition, various families vary in terms of sizes/cycles and the preferences.

6.3 Land Administration Services Sought by the Community

Information gathered from the local community interviewed and the discussions held at the district commissioner's office at Ololunga with various leaders and government officials, reveal the services that are sought at land offices to include: Dispute resolution over conflicts on title land ownership; Registration of titles and issuance with titles; Transfer of titles and lease /sale agreements; Land mutations and sub-divisions; Adjudication and ascertainment of boundaries and ownership of land; Cadastral maps (R.I.Ms etc.) for various needs; and payments of statutory/service fees: valuation, mutations, surveys and sub-divisions, searches

In access of, and delivery of the above identified land administration services, a number of challenges are encountered. These challenges are detailed in the following section.

6.4 Challenges to Land Administration Services

The various respondents identified the following as the key challenges faced in land administration services acquisition and delivery:

- a) Lack of information on qualified land-sector professionals:
- b) Lack of information on land laws, processes and fees charged therein.
- c) Difficulty in accessing acquisition of survey maps which can only be done from land offices based in Nakuru and Nairobi which are too far from the people.
- d) Conservancies are leasing a lot of land thus blocking locals from pastures. The resultant is encroachment of the reserves and forests by herders.
- e) Lengthy, costly and tedious Lands Ministry disputes resolution mechanisms.
- f) Poor capacity and incompetence of local land boards' officials, Corruption and mismanagement: due to the fact that local land committees were not compensated for

their time it was claimed by respondents they are prone to corruption and mismanagement.

- g) Lack of Alternative Dispute Resolution mechanisms: this has resulted in parallel court suits, court injunctions and political.
- h) Narok County Community's Understanding of Decentralization: The opinion of the people about what devolution meant to them was gathered from the locals who sought land services in the lands offices as well as from the forum held with provincial administration, group ranch members and officials and government officers.

To the respondents devolution is:

- a) information on land administration, the services, the relevant staff and the offices are brought close to the people;
- b) community are involved in the decision making with regard to management of the local land and land based resources, collection of revenue, planning and allocation of revenue
- c) community participation, representation and inclusion in the appointment of officers in the local land institutions.

When asked what they wanted devolved the locals identified the following services:

- a) Dispute resolution over conflicts on title land ownership.
- b) Registration of titles and issuance with titles
- c) Transfer of titles and lease /sale agreements
- d) Land mutations and sub-divisions services
- e) Adjudication and ascertainment of boundaries and ownership of land
- f) Cadastral maps (R.I.Ms etc.) production

6.6 Identified Benefits of Devolution of Land Administration Services

From observation the respondents were quite enthusiastic about the idea of devolving land administration services. The following are the suggested benefits.

- a) Land services and related information will come close to the community.
- b) Access to information to the locals about land administration services and procedures will be enhanced
- c) Community representation, inclusion and participation in decision making will be entrenched.
- d) Cost and time savings when seeking services.
- e) Devolved local offices will most enhance downward accountability.

6.7 Possible Limitations of Created Devolved Units

Even though the respondents were very enthusiastic about devolution they were also skeptical about:

- a) the extent to which the autonomous devolved units and counties will exercise their powers,
- b) the capacity of the county governments to raise funds,

- c) the capacity of the unit to carry out their roles,
- d) availability of competent and capable capacity to run the units and,
- e) the effective and efficient administration of the units especially given that for institutional memory some of the people in the current systems would be retained.
- f) Given the slow and conflict-prone constitution implementation process, the respondents were apprehensive about the pace and successful of implementation of the legislations relating to or associated with the devolution land administration services.
- g) The maintenance and the upholding of downward accountability given that most legislations and the practice has been one of upward accountability.

7. CONCLUSIONS AND RECOMMENDATIONS

For the successful implementation of a decentralization policy, the research argued that there is need to include all the three dimensions of decentralization i.e. political, institutional and fiscal.

Highlighting the case of Narok County, the study argued that the county's poor socio-economic development has been as a result of the mismanagement of communal resources land included. An analysis using this study's approach revealed that: devolution as the preferred form of decentralization; the need for empowering decentralized functions at the local level; the need for competent human capacity and appropriate funding; the preference for devolution to the local level and; the need to create democratic, locally accountable and specialized community land boards.

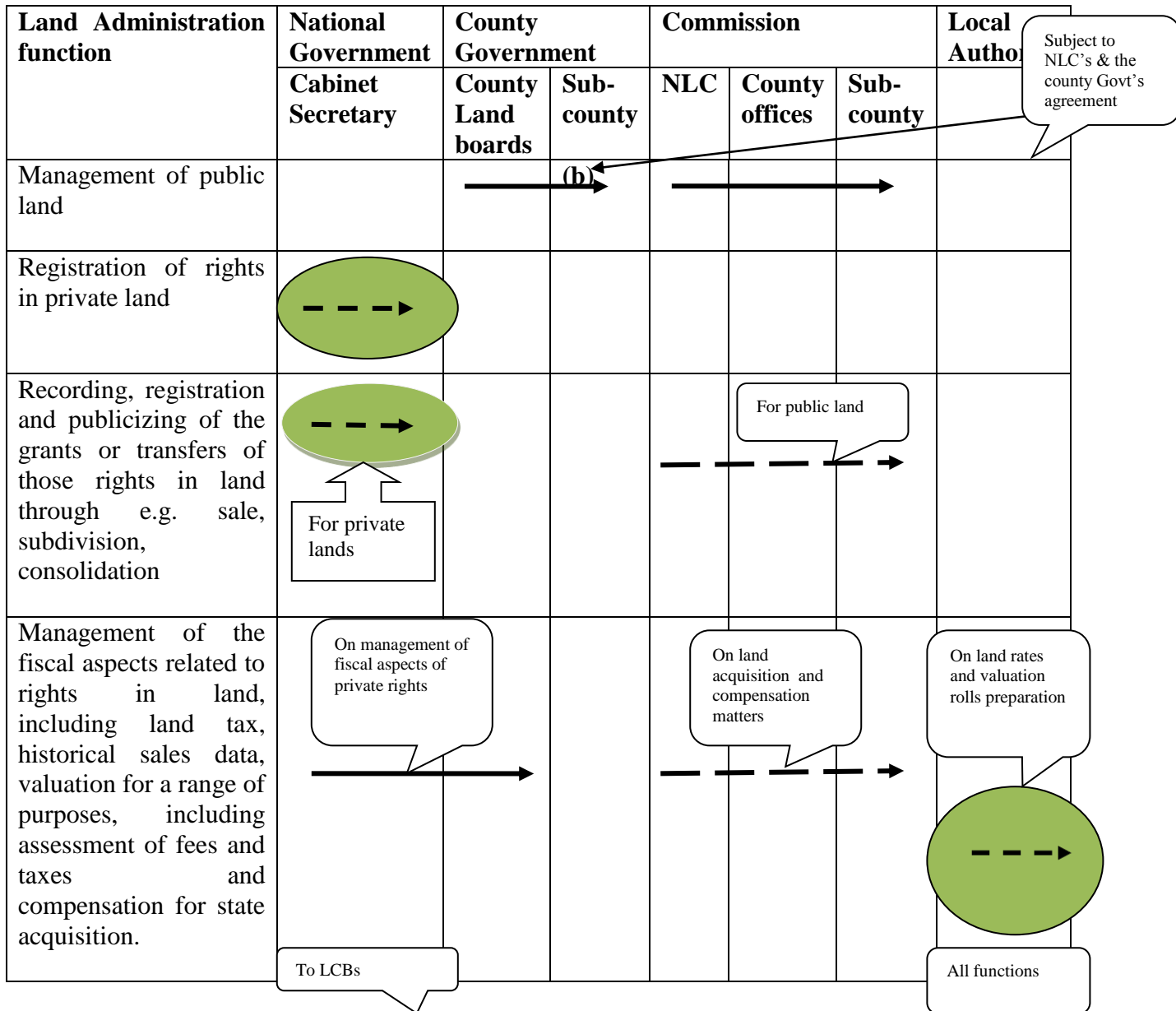
In conclusion, this study was of the view that for effective land administration decentralization, it is imperative that the envisaged institutionalization of land administration decentralization: be geared towards clear and non-conflicting, responsibilities and functions commensurate to the budget; enjoys political will, local legitimacy, financial independence and have decision making powers.

With the above foregoing the research came up with the following recommendations.

- a) All land boards to have representatives from diverse professionals and the community; however they must all meet a minimum level of requisite education.
- b) Land and Environmental Courts and land tribunals should be decentralized to the present divisional levels. Alternative dispute resolution mechanisms should be encouraged to handle land disputes /cases from village level
- c) Flow of information to be decentralized and members suggested that policy land issues affecting them including fees payable, list of professionals to be circulated and pinned at the location levels or through churches
- d) Rigorous civic education to educate communities of land issues and right way to access professional land services through various appropriate media. This is where professional bodies like ISK have to play a continuous role.
- e) Infrastructure and relevant human resource should put in place to ensure that maps

acquisition are digitized and decentralized to location levels.

Besides the above specific recommendations, a relationship model was designed to guide how effective land administration can be achieved within a decentralized framework, incorporating all players and premised on the spirit of accountability. In coming up with its relationship model this research did not regurgitate the functions in the land legislations but found it more effective to come up with a graphical representation of decentralization relationships between the various land administration functions and the envisaged land management and administration institutions.



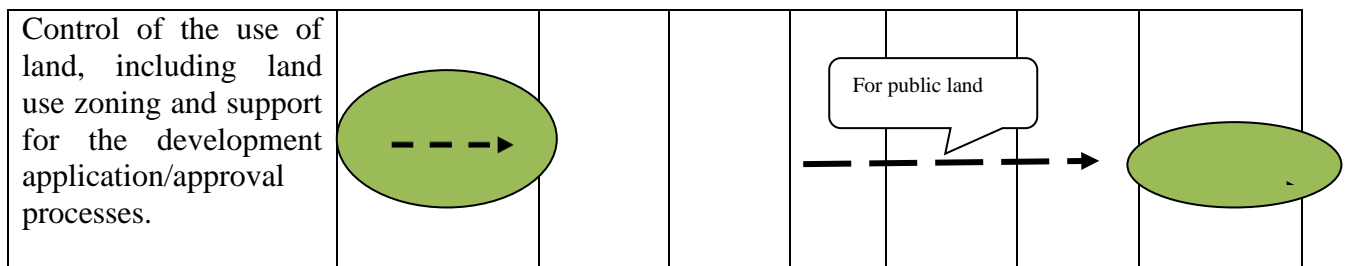


Figure 2: Proposed Land Management/Administration Decentralization Model

Key:

—————▶ Devolve; - - - - -▶ Deconcentrate

Source: ISK, 2012

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BIOGRAPHICAL NOTES

Eunice Macharia holds MBA from Jomo Kenyatta University of Agriculture & Technology, B.A.(Hons) in Land Economics from University of Nairobi, Full Member of the Institution of Surveyors of Kenya (M.I.S.K), Registered and Practicing Valuer, Registered Estate Agent, Associate Member, International Real Estate Management (IREM). The author has over 20 years in valuation and estate management and is the current Chair, Education and Research at the Institution of Surveyors of Kenya.

Winnie Mwangi holds a PhD in Land Administration from the University of Nairobi, Msc-Housing in Development from the University of London and BA (Hons.) in Land Economics from the University of Nairobi. The author has over 20 years in the practice of land administration with similar years teaching and research in the land and housing administration. The author has been involved in Kenya's Land Policy Formulation Process and is currently in the Task force dealing with formulation of the land laws in Kenya. Professionally, the author is a full member of the ISK (Land management) and a Lead Expert in Environmental Impact Assessment and Audits.

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