

Urban Land Grabbing and its Implications to Urban Development

Felician KOMU, Tanzania

Key words: urban land grabbing, land registration

SUMMARY

Land grabbing is a term that most investors find distasteful while to the general public it could be an eye opener to the future of the land that they might be occupying. To the urban planner, it may connote inefficiency and lamed administrative machinery that has permitted greed over land. Whatever land grabbing submits itself to be, its main concern is built on the premise of holding land for the future which may be translated to speculating on land either for economic or social-status gain. Land grabbing in urban areas may be explained from the observed multitude of undeveloped land parcels in urban Tanzania amidst a cry for shortage of land for development. This paradoxical urban reality has been considered differently by scholars, those advocating horizontal expansion of cities tolerate it and subscribe to more urbanization of the peri-urban areas; while there are those that consider viable urban expansion as that which takes cognizance of intensification of all available lands before venturing out to the periphery.

Urban Tanzania is fast growing and in some cities at an alarming rate of over 6.5% per annum. This has bred land pressure for housing development on one hand, but on the other provided opportunities for large scale investments in form of schools, hospitals, retail properties and hospitality industries. With escalating land prices in urban areas, individuals are taking up lands in the peri-urban areas and in some instances from land occupiers with little exposure on the latent value that sits in the land to be sold to the land seekers. With use of five carefully selected cases, this study illustrates how urban land grabbing has given cause to land conflicts thereby impairing smooth urban development. The paper demonstrates how rigid form of land registration has bred loop holes in land use planning and tenure almost crippling and ridiculing the land administration system and made the work of professional town planners less significant to the public.

Urban Land Grabbing and its Implications to Urban Development

Felician KOMU, Tanzania

1. Introduction

Land grabbing is a term that most investors find distasteful while to the general public it could be an eye opener to the future of the land that they might be occupying. To the urban planner, it may connote inefficiency and lamed administrative machinery that has permitted greed over land. Whatever land grabbing submits itself to be, its main concern is built on the premise of holding land for the future which may be translated to speculating on land either for economic or social-status gain. Land grabbing in urban areas may be explained from the observed multitude of undeveloped land parcels in urban Tanzania amidst a cry for shortage of land for development. This paradoxical urban reality has been considered differently by scholars, those advocating horizontal expansion of cities tolerate it and subscribe to more urbanization of the peri-urban areas; while there are those that consider viable urban expansion as that which takes cognizance of intensification of all available lands before venturing out to the periphery.

Urban Tanzania is fast growing and in some cities at an alarming rate of over 6.9% per annum (Sarzin et al, 2012). This has bred land pressure for housing development on one hand, but on the other provided opportunities for large scale investments in form of schools, hospitals, retail properties and hospitality industries. With escalating land prices in urban areas, individuals are taking up lands in the peri-urban areas and in some instances from land occupiers with little exposure on the latent value that sits in the land to be sold to the land seekers¹. With use of five carefully selected cases, this study illustrates how urban land grabbing has given cause to land conflicts thereby impairing smooth urban development. The paper demonstrates how rigid form of land registration has bred loop holes in land use planning and tenure almost crippling and ridiculing the land administration system and made the work of professional town planners less significant to the public.

The local press in Tanzania abounds with stories of illegal land deals that spike of high level of corruption apparently facilitated by ineffective land information systems in the country's land office practice. There are two sides to the problem posed by land deals in cities such as Dar es Salaam; the official land allocation nay governance and the discreet and 'efficient' informal land allocation system. The official land allocation system can be abused and thus acquiescing to land grabbing as discussed later in this paper. On the other hand, the informal land allocation system may allocate land on a quasi-market basis but unfortunately is heavily-dependent on non- documentary data management and the main

¹ In a not so stunning statement President J Kikwete cautioned land owners in peri-urban areas not to sell their lands in a national televised speech on 5th February 2013.

land suppliers are likely to be original settlers with no financial power making them vulnerable to monetary power influence when taking decisions.

During the early years of independence (1960s), the Government of Tanzania chose state control in all important sectors of economy limiting access to resources as option to avoid depletion of the resources as G. Hardin (1968) had advocated in the Tragedy of Commons. This strategy seemed to have checked individual greed for wealth and helped to instill high level of compliance to rule of law. But in the late 1970s and towards 1980s high level of corruption and inefficiency in the State Controlled-enterprises paved way to the other strategic option- privatization of the public sector(BTI, 2012). This strategy adopted in early 1990s has not seemed to have solved the problem of high level of corruption in the land sector and instead urban land grabbing in both official and informal setting has persisted. As observed by Massay (2013), the number of land disputes cases filed at Land and Housing Tribunals in urban areas has increased over the last 4 years jumping from 13,200 to 19,900 between 2009 and 2012, with urban tribunals taking the brunt of the cases. The cause of the land disputes may not wholly be attributable to urban land grabbing. Nevertheless it is the high rate of reported cases related to land grabbing as discussed below that interest us. It is this high level of urban land grabbing and its impact on urban development that has motivated this study. Could it be for example opportune to now consider other options in urban planning such as the concept of common property that might be more effective in managing resources than the market or the estate as Elinor Ostrom once propounded?

2. Urban Land Grabbing Types

Urban land grabbing is construed as taking up lands in a conniving manner usually by those with information on available pieces of land and their ownership particulars. From the studies in Tanzania, there are two forms of urban land grabbing in practice.

The first type refers to situation whereby a prospective land seeker approaches one of the freely available 'estate agents' (dubbed as 'dalalis' in Swahili) who then connect the land seeker with a land seller. This land seller may be a genuine owner of the land in which case the resulting land deal will not fall into the concept of land grabbing as used in this paper. However in a number of situations, the estate agents will have identified a particular piece of land that has remained undeveloped and un-attended for a considerable number of years. In usual practice, a land owner may have arranged for a watchman to keep an eye against land invaders on such lands (Mollel et al, 2007). These watchmen as in Case No. 1 above may conspire with conmen who masquerade as the right land owners of the land. In this way, the land seeker is introduced to these conmen who are well connected to the local leadership within the hamlet ('mtaa'). The land seeker concludes the sale deal without carrying out due diligence as would have been expected of him.

The second type of urban land grabbing happens on peri-urban land where inadequately undeveloped pieces of land usually owned by municipal councils, firms or individuals attract occupation by other people. These are usually new residents who have migrated from rural areas to the city or have moved from one part of the city to the other in search

of land for construction purposes. Being aware of the fact that the land belongs to what these land seekers consider to be ‘elites’ of the society and powers that they may possess to evict them, they organize themselves and plainly invade the land subdividing it amongst themselves and encouraging each other to erect a structure on the individual lots of land so acquired.

This type of urban land grabbing by a group of citizens is reckoned to also be motivated by political agenda. There are several examples under this type in the city of Dar es Salaam. The most famous would be the Chasimba Village where its residents were said to have invaded land that legally belonged to the Twiga Cement Factory at Wazo Hill. In 2008, the Cement Factory won a court case against the villagers who had erected buildings on the land rendering around 16,000 persons homeless. Another example is also within the same neighbourhood at Madala where more than 1,115 people were made homeless when the original land owner, one Mr Chacha recovered his land from the Nakalekwa residents. Two people were killed in the fracas that ensued between the villagers and Mr Chacha’s security men (bouncers). The Regional Police Commander for Kinondoni visited the cleaning up of the site and summed up the government’s position on land grabbing:

“... government had announced that all who had invaded the areas illegally should pack and go. This is the beginning of the operation. We plan to do the same in the other areas which have been invaded...” The Guardian 24th August 2012.

3. Who is land grabber?

There are at least four land grabbers that can be identified in Urban Tanzania:

- a) Those land seekers who deliberately take on other people’s land by manipulating land registration data held at respective land offices. Incidentally, such land grabbers are popularly and even fondly referred to by the public in such areas as Mikocheni. Without a wink, the first 3 respondents that were asked the question whether there were such dealers in their areas were affirmative, explaining that as soon as the land seeker had made certain the information on land titles (or letter of offer) was in his favour would organize a team of labourers to erect a fencing wall and construction on the land that is subject of acquisition over night. Cases 1 and 2 attempt to explain such possibilities.

Case 1: High Court Advocate Arraigned for Illegal Urban Plot Deal.
A high court advocate was arrested on 3 March 2012, after he had prepared land conveyance deed over a Plot of land which was being sold to a Chinese man for US\$ 500,000 in Masaki, Dar es Salaam. According to the Police Investigating Officer, the deal failed to materialize when the true owner of the plot showed up and contested. He affirmed that investigation had indicated that this was not the first time that the Advocate was conniving with the thugs to transact in fake land deals.

Case 2: Local Leaders Apprehended for Urban Plots Frauds

Three individuals were arrested on 8th November 2011 in Morogoro for conniving with a Ten-Cell Leader at Mgudeni Street, Kihonda Ward in a scam that involved selling of fake plots of land to several land seekers during February – November 2011. According to the Investigating Police Officer (one Chialo), the accused had committed three similar offences and there were court proceedings against them. The accused masqueraded themselves as true landowners or estate agents with readymade sales agreement and forged stamps.

- b) Those land seekers who fell victim to a cartel of conmen (Naïve Land Grabbers):. There are several examples and most of these are in Mikocheni and Mbezi Beach areas of Dar es Salaam where individual land seekers end up paying wrong people for pieces of land. In one instance, a Building Contractor had successfully negotiated a purchase of plot of land, paid an advance sum agreeing to pay the remainder upon being receiving a land title in his name. This was done and he parted with the money in 2002 but in 2004 while he had finished roofing his new house on the plot, he received a court stop order and it was later established that the documents that he had been given were all forged and that the Plot belonged to a prominent member of the society.

Case 3: Four Charged with Fraud over Four Plots of Lands at Kunduchi Mtongani Four individuals including a student obtained Tshs 620m from a Businessman to whom they had sold four plots of land that did not belong to them but to one Hellen Mvuti during July 2011 (The Guardian 27th July, 2011)

- c) Politically-Motivated land grabbers: these are those who for some exterior political convictions invade idle lands, subdivide it among themselves and occupy. The main difference between this type and the aforementioned is that they are usually a group of people, ostensibly poor and with large families. The local leadership will usually offer support to this group against the genuine land owners.
- d) Amassing Land Grabber: There are situations where with power of influence, individuals mainly government officials are able to allocate large number of plots of land to themselves. Case No. 4 sums up such a situation within Temeke Municipality. The motive for the amassing land grabber is an expectation on land prices appreciation at a future date.

Case 4: Amassing Land Grabber

The Temeke Municipal Council had produced 1,800 surveyed plots of land for sale at Gezaulele for a new planned township in 2010. One senior government officer is said to have used his position to acquire over 100 plots that he then sold to those in need at prices that ranged from Tshs 3.5m to Tshs 6.5m through an agent. The deal was however completed when the buyer had cleared Municipal Council charges of between Tshs 5m and Tshs 10m which he had to deposit with the Tanzania Investment Bank into Municipal Council Accounts (The Guardian 9th April, 2011).

4. Emerging Issues

The connotation that urban land grabbing is akin to invasion of someone's land by a land seeker with or without help of land agent paints the picture that land grabbing is an illegal and immoral action against the land administration units of the municipalities and the rightful owners of land. However it is neither the illegality nor the morality of urban land grabbing that motivated this study. The study was intrigued in finding out how could such action indeed happen in a society where there are laws, defined rules and regulations on land ownership.

4.1 Land Registration System in Tanzania

Tanzania has since 1920s adopted a land registration system (Torrens Title System) based on precise measurement of land, titling and registration. Under this system, every parcel of land is referenced to its cadastre points and marked with permanent beacons. A land register containing information on each parcel of land surveyed and titled is maintained at the Ministry of lands which is freely accessible to the public for inspection. A well-defined Municipal and District Land Office in each of the administrative districts of the country is in place staffed with skilled and experienced personnel from the cognate fields of land surveying, town planning, land management, conveyance and architecture. Besides, at ward level, there is a governance unit responsible for all land matters and a dispute-resolving organ. Unlike many other countries, Tanzania prides itself with the smallest-unit of administration at cell-level usually run on voluntary basis and well-respected by the residents. Indeed, all land sales and transfer transactions at sub-ward (Mtaa) level are usually witnessed by the Ten-Cell Leaders (Mjumbe). Yet, despite all these arrangements, land grabbing and ensuing land conflicts and disputes have been on increase over the years.

4.2 Role of executives and elites in urban land grabbing

It is opportune to investigate whether the executive at both local government and central government level has had role to play in fuelling urban land grabbing in Tanzania. In June 2010, the Regional Commissioner for Dar Es Salaam was quoted by the local press in Tanzania as having closed down District land offices in two of the Municipalities of Dar es Salaam in what was termed: 'Clearing errant land officials'. From interviews related to other studies, respondents readily pointed fingers at the executives and particularly those in land management and town planning offices as being responsible for incongruent information about their lands and hence creating possibility for land grabbing by those

that are able to spot the loopholes. Data findings from University Dissertation Projects point out sub-division of public open space and creation of plots in hazardous areas as main areas where the executives have aided land grabbing in the society.

Whichever way one looks at the executive and in particular the professional team that serves government agencies, there is clear evidence that professional liability of the individuals in government agency is wanting. Respective government agency takes full responsibility of its staff actions even where there has been clear evidence of professional misconduct by the respective staff. The requirement for registration and abiding to a code of conduct is only binding for those professionals working in private sector and not in the government sector. Such a system breeds laxity in exerting from staff his commitment to a set of rules and standards mustered during his professional career learning.

4.3 Lamed Land administration system

The reigning land administration system in Tanzania borrows a lot from the conventional western system (Zevenbergen, 2011) and is based on the Torrens land title registration mode. The system requires major input from two distinct groups:

- i. 'Gatekeepers' who are the professional persons working on land matters which will include surveyors, lawyers, planners, and valuers. Apart from the lawyers, the rest of the gatekeepers in practice will have graduated from Ardhi University or form its predecessors. The training that has been offered to the gatekeepers has tended to be sectoral and hardly crosscutting on these disciplines. The inputs that go into the land registration system have therefore tended to be uncoordinated, and even where they appear coordinated as in such projects like the 20,000 Plot Delivery Pilot Project of 2002 in Dar es Salaam, individuals seeking land will nevertheless have to visit several offices/firms before concluding a particular land deal. In professional practice, it is even forbidden for a practicing firm to provide services other than the discipline for which it is registered. As a result, a land seeker is advised at various stages by different consultants on an aspect that the other consultants may have very little information or interest about. In the case of lawyers whose main responsibility is documentation and ensure authenticity of the deals, those practicing in Tanzania have been trained outside the realm of real estate and in the English land registration (deed registration) which is non-existent in the country. It is impossible not to attribute some of the misdeeds in land conveyance to lack of skills from the practicing lawyers.

Ardhi University has recognized this deficiency in its training programs and has set up a Land Administration Unit which strives to break the departmentalization of knowledge both at the University and in the industry with a view of recognizing the multi-disciplinary nature of land administration.

- ii. Government agencies such as the ministerial departments (land registry, land commission, survey department, land registry, land use planning commission/department. Even within Municipal and District Council setup, office space for these functionaries are separated from one another and in some cases

sited at a considerable distance from one another. The records movement from one department to another has been for many years slow and non-achievable. Information flows from Municipal levels to Ministerial levels have also not been smooth either due to physical limitations but also due to human errors. The absence of one-stop-shop arrangement in the land sector, has facilitated the ‘amassing land grabber’ to access land beyond actual requirements and pitted the ‘naïve land grabber’ against the common who have taken full advantage of the information gap created by the system.

4.5 Complex Network of local power relations

Some of the lands grabbing incidents in urban areas owe their origins in the intensification of competition for land resources in the fast urbanizing towns. As the cities expand and engulf rural areas, the customary structures for administering land has continuously undergone changes and in several cases losing their identity (Komu, 2003). At institutional level, laws and regulations seek to recognize existence of these customary traditions especially in land tenure even according them protection while in practice they have been withering away. This has created a web of complex relations that manifest themselves in frictional power relations between those that are appointed as local leaders and hence custodian of customary tenure and those migrating to the area who are alien to customs and traditions of holding land in the area. Some of the studied cases of land grabbing in urban areas indicate a struggle between a groups that consider themselves indigenous to the area against an elite individual person who claims ownership title to land through the formal land registration system. Like in the case of Chasimba at Wazo Hill, the elites with documentary evidence of having been granted the land usually win cases against the so-called indigenous claimants.

4.6 Outdated Laws

Since 1999, there has been steady review and enactment of laws that govern relations of man to land in Tanzania. There are two sets of legislation that are of interest in addressing urban land grabbing problem. These are those laws that deal with the land tenure and registration with a view of realizing the role that land plays in the economic growth and sustainable development of the society as well as the need for good governance and social stability. The second set of legislation is that which deals with the gatekeepers (the registration and regulation of professional practice of the main actors). The first set of legislation has been aptly pursued in the country starting with the passing of Acts No. 4 and 5 of 1999 (the Land Acts and their various amendments) and implemented. Legislation related to regulating professionals in the land sector has been slow and in some disciplines ostensibly lacking creating a vacuum that has provided fertile grounds for land grabbing to flourish. Some of the immediately desired pieces of legislation would be those that facilitate land conveyance such as Estate Agency and Conveyance. The Surveyors (Professional Registration) Act of 1977 is outdated in several aspects and does not fit in with today’s work of a surveyor, valuer, property manager/facilities manager nor land manager.

Consequently, whereas laws, regulations and possibly professional standards that would ensue from professional bodies would have guided members of society towards accessing land in an orderly manner, the existing situation encourages quick fix for those seeking land.

5. Counter Arguments for urban land scams in Tanzania

From various sources, some explanations have been attempted towards understanding of the urban land grabbing problem in Tanzania. Some of these reasons are worth looking at while some have to be dismissed for not being viable. These include:

1. Low awareness levels of the laws, regulations and procedures for acquiring land through sale as provided for under the Land Act No. 4 and 5 of 1999, the Land Registration Act (Cap 334), Contract, Agency Law and the Evidence Act. As discussed earlier, urban land grabbers have more information than probably most actors. They rely on physical data from the field, documentary data from offices which they manipulate to prove their cases and personal data of the individual handling their cases. The reference to Contract, Agency law and the Evidence Act is usually made by the legal profession whom as have argued before are more conversant with the Deed Registration System and least informed about the requirements for completing a land registration on the titling system (Torrens title). These laws are old and inappropriate for the kind of land problems that prevail in Tanzania.
2. Lack of appropriate land registry system that would ease due diligence in terms of available plots and ownership particulars. This is an argument that transcends most of the literature on the land problem in Tanzania and worth looking at. For some historical reasons the land registry has always been physically separated from the data sources (the District land/Surveying/Planning offices). It is only in recent years that we are seeing concerted efforts being made by the Government to move land registry to the other functional agencies in the land sector and computerization of data. The need for one-stop shop facility cannot be over-emphasized here.
3. Lack of necessary number of solicitors (legal counsels) and in particular those versed in land deals. Both in the district land offices and in consultancy firms, there is an acute shortage of legal counsels with training on the registration system in place in Tanzania. In one occasion, the Ardhi University failed to run courses in Planning law as the University could not find a suitable replacement not only as a fulltime lecturer but even as Part-time Lecturer!
4. Misuse of the growing influence of Information Technology in frauds and forgery. While the Government strives to improve its records management system, parallel efforts are being made to counter these efforts. This is also true of other aspects such as planning ahead of the people in the development of peri-urban areas.
5. A problem of absenteeism by land owners has resulted in land lying idle for several years attracting land grabbing. During 2002-4, the government had planned to carry out an inventory of all urban land that was in occupation or otherwise (Lugoe, 2006). It is not clear whether this program was ever implemented. Idle land in an area that

is ripening for development is an attraction to land seeker and it is prone to invasion if it is not protected.

6. Way forward in Curbing Land Grabbing in Urban Tanzania

Land grabbing whether in urban or rural areas is a menace. Olivier De Schutter (2011) aptly sums up the menace arguing that amidst poverty, land grabbing that is theoretically seen as an opportunity of capital investment for large scale farm production cannot in itself create the wealth and peace that is desired. It antagonizes society and breeds fertile grounds for open conflicts and waste of resources. Urban development is delayed and lamed because of the ensuing frictional power relations caused by the land grabbing. Unfortunately once land grabbing has taken place it tends to re-occur as the losers fight back and thus breeding a new conflict. In the Madala case (above) for example, part of Nakalekwa Village had been expropriated from the villagers for an individual in late 1990s, and in 2010, the villagers were fighting to get back the land, this was also the case with Chasimba Village. The less powerful individuals will try a ‘comeback’ and this has tended to result in cyclic open conflict and loss of life.

It is important to recognize that transactions on land do not take place in a neither political nor historical vacuum. Individuals in land deals have an understanding that has been shaped by their historical relations and the alliances that they will have formed in their relationship with one another and those in power. The local institutional set up may also influence the way the individuals behave in the society. It is therefore desirable that solutions to the urban land grabbing problem take cognizance of these facts.

The main loophole that urban land grabbers use is the timely access to land data and uncoordinated work system in land office. Innovative land administration offers opportunity for redressing these weaknesses and encourages orderly access to land. Tanzania through the Ardhi University is a partner in a Network of Land Administration for Eastern Africa. The network cherishes a land administration definition that reads as follows:

“...the process of determining, recording and disseminating information about ownership, value and use of land when implementing land management policies...” (Joint Workshop of UN-Habitat, FAO and World Bank in 2001).

Land Administration understood in this context surpasses the current practice both at the Ministerial and local government levels. It recognizes multiplicity of the disciplines involved and strive for setting up one-stop shop services centre. The key issues that a land administration construed in this manner will strive to resolve the challenges that face the land sector in our midst which include the following:

- a) Resolving co-existence of customary land holding systems in urban areas
- b) Timely intervention and management of peri-urban land areas
- c) Re-training and Refresher Training Programs of the Gatekeepers possibly at Land Administration Unit of the Ardhi University.

- d) Improving existing laws that they are made comprehensive, appropriate and up-to-date.
- e) The need for supporting university training programmes that coordinate the integration of the land disciplines to provide broader, all encompassing and holistic knowledge on land administration under one roof.
- f) Improve link between training and the industry

7. Conclusion

Urban land grabbing manifests itself in a number of ways. The ‘strongest’ in the society are normally the winners in a land grab and more likely to grab. There are subsequent land grabs that are retaliatory and in several occasions driven by political motives where the ‘weak’ in the society pull together in solidarity and invade. The ugly aftermaths of a land grab can be a cause of concern for peace and eventually leading to slowed urban development. To curb urban land grabbing, there is a strong case to improve on land information system through working with training institutions and setting up one-stop shop centre for land services centers. Professional staff working in land offices ought to be subjected to registration and adherence to a code of conduct.

References

- BTI (2012) Bertelsmann Stiftung,— Tanzania Country Report. Gütersloh: Bertelsmann Stiftung, 2012.
- Hardin, Garrett (1968) The Tragedy of the Commons, Source: Science, New Series, Vol. 162, No. 3859 (Dec. 13, 1968), pp. 1243-1248 Published by: American Association for the Advancement of Science Stable URL: <http://www.jstor.org/stable/172474>
- Kombe W. J (2010) Land Conflicts in Dar es Salaam: Who Gains? Who Loses? Working Paper no. 82 - Cities and Fragile States - Crisis States Working Papers Series No.2
- Lugoe, F. N. (2006) A Comprehensive Inventory of Activity Needs of the Lands Sector in Tanzania, Dar-Es-Salaam Institute for Land Administration & Policy Studies Ltd
- Massay, Godfrey Eliseus (2013) Adjudication of land cases in Tanzania: a Bird Eye Overview of the District Land and Housing Tribunal, Hakiardhi Publication, Dar es Salaam
- Mollet Lazarus L and . Lugoe Furaha N (200) Urban-Specific Land-Use Conflicts And Their Effect On Land Management, Good Governance And The Environment, Dar Es Salaam Institute of Land Administration Conflict-Free Land-Use Awareness Workshop Series
- Olivier De Schutter (2011): How not to think of land-grabbing: three critiques of large-scale investments in farmland, Journal of Peasant Studies, 38:2, 249-279
- Sarzin, Zara and Raich, Uri (2012) Financing the Urban Expansion in Tanzania, Urban Development Series No.14, The World Bank

Zevenbergen, Jaap (2011) Land Grabbing Prevention Needs Land Administration, But Even More Land Governance, Proceedings of the Seminar on Analysis and Measures to Prevent Land Grabbing In Tanzania, Ardhi University Land Administration Unit, Dar es Salaam

CONTACTS

Dr Felician Komu Given name and family name

Ardhi University

P O Box 32309

Dar es Salaam

TANZANIA

Tel. +255 222 775214

Fax + 255 222 775214

Email: fkomu@yahoo.com

Web site: www.aru.ac.tz