

EVALUATION OF THE PROCESS OF LAND REGISTRATION ACCORDING TO REGISTRATION OF TITLES ACT (RTA) SYSTEM IN KENYA

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Abstract

Kenya has a diverse system of registration that has a very long process of registration. While other countries have improved to automation, the Kenyan system is still manual and takes a long period for registration to be complete. There have been attempts to harmonize this system to reduce the bureaucratic bottlenecks but this has made the situation more complicated by having different codes being active at the same time. There are 3 deed systems and two title registration systems. All these are in use today. This is different from comparative systems that include the European countries, the Americas and some African countries.

A thorough analysis was done to the Act itself. Information contained in the registration of the Act including what can be registered, and cancellation of registration has been researched on. By conducting interviews to the registering authority personnel, a process of registration was documented in this study. The study also reviewed that Registration of Titles Act is a strong system that need to be reviewed. It has enabled registration of very many properties but it has a lengthy process and is not meeting the modern market requirement.

Through interviews conducted to consumers of registration that is property owners and other investors, it is possible to analyze the strengths, weaknesses and opportunities and threats of the system. At the end, conclusions and recommendations are made.

Keywords: Registration of Titles, commissioner of Lands, Deed plans, Director of survey, Land officer

1. INTRODUCTION

This study is about land registration in Kenya. There are five systems currently operating in Kenya. The registration system has developed from deed registration to title registration. The first title registration system to be developed was Registration of Title registration Act (R.T.A). Though this Act was to be slowly replaced with Registration of Land Act abbreviated (R.L.A) this system is still functional and most leasehold and land parcels in Nairobi are still registered under this system (Onalo, P 1986).

There are many Rights related to land. as discussed by Larsson [1991]. In order to manage the land as a resource in more economic and profitable way there is need to identify this right and register them (UNCHS (Habitat), 1990). In Kenya Land is viewed as a very important resource. It is termed as 'Gold' to many. When the rights to land are not well identified and registered disputes arise and sometimes there is loss of lives.

There has been struggle over the years over identification and registration of these rights. The latest example is 2007 Post election violence that though political it was more related to land ownership. It was viewed that a certain tribe did not have a right to own the land in a certain region that was not traditionally their own. There has also been fights over forest land with few people feeling they should use the land to produce food crops and others feeling there is need to conserve the forest the latest case being of Mau Forest. Enemark [1997] observed that currently, there are only two forms of land registration internationally. These are the Deeds Registration and Title registration In Kenya, land registration system comprises of both the deeds registration and title registration as discussed by Onalo, P 1986. The deeds registration system was the earliest form of registration introduced by the British Colonial government towards the end of the 19th

Century. The system is governed by the Registration of Documents Act (RDA), Cap 285 of 1901, the Land Titles Act, Cap 282 of 1908, and the Government Lands Act, Cap 280 of 1915.

Title registration is governed by the Registration of Titles Act (RTA), Cap 281 of 1919, and the Registered Lands Act (RLA) Cap 300 of 1963. More recently, in 1987, the Sectional Prosperities Act No21 was enacted to provide ways and means of registering sectional properties including flats. Sectional properties Act is enacted under RLA cap 300 of 1963. There is The Land Registration Act, 2012, No. 3 of 2012 and the land Act, No 6 of 2012 that have been established in accordance with the new constitution. This acts repeals all the old acts, although this has led to use of multiple acts in registration of land rights.

What is emerging is that while developed countries have adopted the Title Registration System Mattsson, H ,(2008) , in Africa, the majority of the countries are still operating in the customary land ownership and Deeds Registration System. No country in Africa today can claim a complete overhaul of the registration system into Title system. A few countries have embarked on the process of modernizing their land registration systems in line with the internationally recognized benchmarks. South Africa, for example, has established a fully digitized title registration system, even though its coverage is skewed towards the areas formerly occupied by the European community.

In Kenya it is evident that the existing Registration system contains cadastral information in the offices of the Director of Survey while the land registration information is in the office of the Commissioner of Lands. Additionally, the registration system is based on several multiple legislations which cause confusion to the ordinary land owners in Kenya. The registration system is largely oriented towards internal tax collection rather than addressing modern economic challenges of globalization, technological changes, sustainable development and environmental conservation.

In view of these challenges, it is evident that there is a need to modernize the land registration system in Kenya to be in tune with the requirements of international benchmarks such as the cadastre 2014 model.. Before this can happen however, there is a need for a study to evaluate the system in order to determine its strengths and weaknesses and to establish a strategy for its modernization.

This study was intended to carry out a comprehensive evaluation of the Registration of Titles Act system in Kenya in order to establish its strengths and weaknesses, as well as the performance gap between the system and the internationally accepted standards.

2. REGISTRATION OF TITLES ACT, 1919

This system was introduced in order to form a title registration based on the Torrens system of title (Onalo,1986.). It was modeled on the registration of Title Enactment Act 1897 of the federal Malay states and the Transfer of Land Act 1890 of Victoria.

The substantive law to Registration of Titles Act is Indian Transfer of Property Act. The registration involves accurate survey and fixing of the boundary by the director of survey either through the licensed surveyors or the government surveyors. The result of this is deed plan that shows the plan of the surveyed portion and the dimensions. It also involves registration of the deed plan by commissioner of lands through the registrar of titles, result of which is a title deed certificate given to property owners and duplicate copy kept by the commissioner of lands for future reference.

The system was enacted in order to improve on registration especially since the previous ones were registration of deeds/ documents. It was also for the purpose of achieving the security of tenure by giving the right of indemnity to the people who relied on the register.

There are various processes that make a new title under Registration of Titles Act. These are: Initial allocation (new grant/ government grant), Renewal of lease / extension of lease, Subdivision and Change of user.

The registration of Titles act requires that a proper survey using fixed boundary is carried out on a piece of land. This survey is carried out by private surveyors who are licensed under the institution of surveyors of Kenya. This survey is submitted to the director of survey to check whether it has been carried out in accordance with the required standards of the system. He also checks whether there was proper approval from the commissioner of lands to carry out the survey. Any survey carried out in Kenya under Registration of Titles Act for the purpose of registration must be authorized by the commissioner of lands who registers the rights.

Once the director accepts the survey is carried out properly he authenticates the survey plans. A deed plan is then drawn that contains information on each parcel of land. The deed plans contains information such as the boundary data, land reference number for the parcel, the abutments, the surveyor who carried out the survey, the acreage of the property, the officer who approved the deed plan. The deed plan is signed and sealed by the deed plan officer and forwarded to the commissioner of lands for registration. A copy of the deed plan that is not signed is retained for referencing.

2.1. Actors in the registration

Registrar of Titles: The president appoints the principal registrar and other registrars who work under the principle registrar of titles. Every registrar has a seal of office with which they seal all certificates of titles issued to him.

Commissioner of lands: He is also appointed by the president. The commissioner is placed in control of land, land surveys, land registration and recorder of titles departments

2.2. What can be registered

There are various instruments that can be registered under the Act. This includes leases, mortgages, charges and ownership rights. Ownership rights can be registered to a person and a group of investors. Minors (below 18 years) can also be issued with a certificate of ownership through their guardians. The processes which can lead to registration of a new title in Kenya under the Registration of Titles Act include;

Grant: In Kenya Land is categorized as private land, Government land or customary land. All the land belongs to the crown initially hence the Government land. The land has progressively been transferred to individuals either as lease or freehold (absolute ownership) through a process known as 'grant'. The commissioner of land is the one who has the powers to issue grants to individuals. The land officer who works under the commissioner of land sends a grant document to the registrar of titles. The document contains information on land being granted to an individual. The registrar registers the document in the government office and delivers the grant document to

the commissioner of land who files a copy of the grant and issues a title certificate to the owner of the grant

Property formation: This includes processes such as subdivision, amalgamation and partitioning. All these processes lead to registration of new titles with surrender of the initial titles.

Transfer of land. When land is transferred, the registrar on payment of some prescribed fee issues a certificate in favour of the new proprietor. All previous certificates are delivered to the registrar for cancellation. Certificate of title issued is a conclusive evidence of the proprietorship. The registered person is not subject to challenge except on the ground of fraud or mispresentation to which he is proven to be party. Charges and leases can also be transferred and the transfer registered. Leases for term exceeding twelve months can also be registered. However agreements for leases for a term not exceeding twelve months are valid without registration. Where a registered person dies, representatives of estates can apply to be registered as the proprietors for example through inheritance.

Change of user rights. Change of user rights also requires that one gets approval to change the user rights from commissioner of lands. Commissioner of lands also seeks advice from other land registration bodies such as land survey, local government and physical planners. A new certificate of title is issued upon surrender of the previous title for cancellation.

2.3. Compensation to individual who suffer damage

A person who suffers damage due to erroneous information in the register has a right to compensation. This compensation is recovered from the person who causes damage. If the person who causes damage is not reached or is not known the compensation is paid using the public fund. In estimating damage the value of all the buildings and improvements erected on the piece of land are excluded.

2.4. Priority in registration

Time of registration is of essence in the registration of titles Act. A presentation book is kept by the registrar of titles that contains description of the instrument which is given in for registration. For the purpose of priority the time of registration is taken as the time of registration. The document that is booked

in the presentation book is given the priority over any other documents booked later though the later instrument may have gained registration faster.

For grants, every grant is taken to be registered as soon as it has been marked with folio and volume number so as to indicate its place in the register. Registration is thus given by registration in the registry and not by execution.

2.5. Cancellation of registered instrument

In the case of a nonexistent or fictitious person being registered as owner of the land, the name in the register or certificate of title may be cancelled on order of relevant authority. Corrections can also be done in the registration for example miss-description of land boundaries or errors. In such a case, registrar orders the person to whom the instrument is erroneously presented to, to surrender the certificate of registration to the registry to be corrected or cancelled. If the person fails to bring the document, the court may order him to bring then document. The punishment for such a case may include imprisonment to the person.

3. PROCESS OF REGISTRATION OF TITLES ACT

This section of the study contains information received from interviews involving the chief land registrar in the ministry of lands, two land officers, officer in charge of records and the researcher experiences in the records office. The Aim of the interviews was to document the process of registration. The interviews involved questions such as the process of registration of the registration of land under Registration of titles Act. The interviews also answered the information contained in the files. The interview was analyzed to give the process of the registration process to the end of the process. Most of the officers have little knowledge on what happens in the offices they are not involved in. The following are the questions that the officers were answering during the interview:

- Name(optional)
- What is your Job description?
- What office do you work in?
- From which office do you receive land documents (file) for registration?
- What information do you check in the document before authenticating documents?

- What information do you add in the file during registration?
- Do you sign any document after a file process passes your office?
- To whom do you take the file after working on it?

Before registration of titles that is done under the commission of lands there are different stages that are undertaken that is discussed in brief here under As discussed by Githinji Macharia (2005). For Agricultural land registration is under R.L.A and involves application to the land control board. For land that is not agricultural land the process is long. It involves the owner of the land consulting a physical planner to plan and fill a PPA1 form. The PPA 1 forms should be the statutory forms but some municipalities have duplicated them and put their Logo on them. The land owner purchases them and have them filled in by a registered physical planner. The forms are submitted to the relevant local authority and an approval fee that varies from one local authority to another is paid. According to the physical planning Act, the local authority may, when considering a development application submitted to it consult with any of the following offices or Authorities. The Director of Survey, The Commissioner of lands, The chief Engineer (Roads), Ministry of Public works and housing, The Chief Public health Officer of the ministry of health, The Director of agriculture, The Director of Water Development, The Director of Livestock Development, The Director of urban Development, The Chief Architect, Ministry of Public works and Housing. The Director of Forests; and Such other relevant authorities as the local as authority deems appropriate.

The local authority then issues the land owner with the PPA2 (approval for development) forms that are handed over to the land officer working under the commissioner of lands for further approval. For development involving more than 4 plots, the approval has to be referred to the commissioner of lands through the respective land officer through a memo. The PPA2 is taken as a comment. Comments are also taken from Director of Survey and Director of physical planning before reaching the decision. The commissioners Decision is final and the survey cannot be processed without it. After obtaining the approvals the survey is carried out as per the survey Act cap 299 and deed plans produced.

3.1. Registration in Director of survey office Survey of Kenya Main registry

A set of deed plan and a forwarding letter is prepared by a licensed surveyor and forwarded to the director of survey for sealing. The deed plan has to go through the checking and numbering system. They are provided in two copies, a tracing and a linen copy. The licensed surveyor forwards to the survey of Kenya main registry. It is received and entered in the black book showing the date it has been received and the surveyor. It is stamped and given a date of receiving.

Senior Assistant Director, cadastral: The Director checks the deed plan and authorizes the SADC to continue with the process. The SADC checks if it is a viable process and if it is sends it for Processing to Survey Records Office (SRO). A t cadastral registry the forwarding letter is filed in the appropriate location file and forwarded together with the file to the officer in charge of SRO.

Survey Records Office: The officer in charge delegates the work to the staff members to process. This means they look for the survey plans both tracing and linen copy that was used and the computation file that was used in carrying out the survey. They give the deed plan number and also inscribe it on the survey pal for future reference. It is then forwarded for checking.

Checking office: The officers check if it has been drawn properly with the correct dimensions and directions. The checking officer also countersigns on it. It is then forwarded to the sealing officer for sealing.

Sealing: The officer checks if all requirements are met that all the final approvals for the survey are given that includes final approval from commissioner of lands and PPA2 from city council and that all the conditions of the approvals as indicated in the PPA2 are met for example the road surrender. He seals the linen copy of the deed plan and forwards to the commissioner of lands for registration (figure 1). The tracing copy is kept in the survey records office stores for reference and security.

For a new grant survey, the deed plan is sent directly to the commissioner of lands by the director of survey. However, for other title survey the licensed surveyor and in rare cases the land owner receives the deed plan and sends it to their lawyer who sends it to the commissioner of lands for registration. In most

cases the lawyer is the one who assists the land owner in registration process.

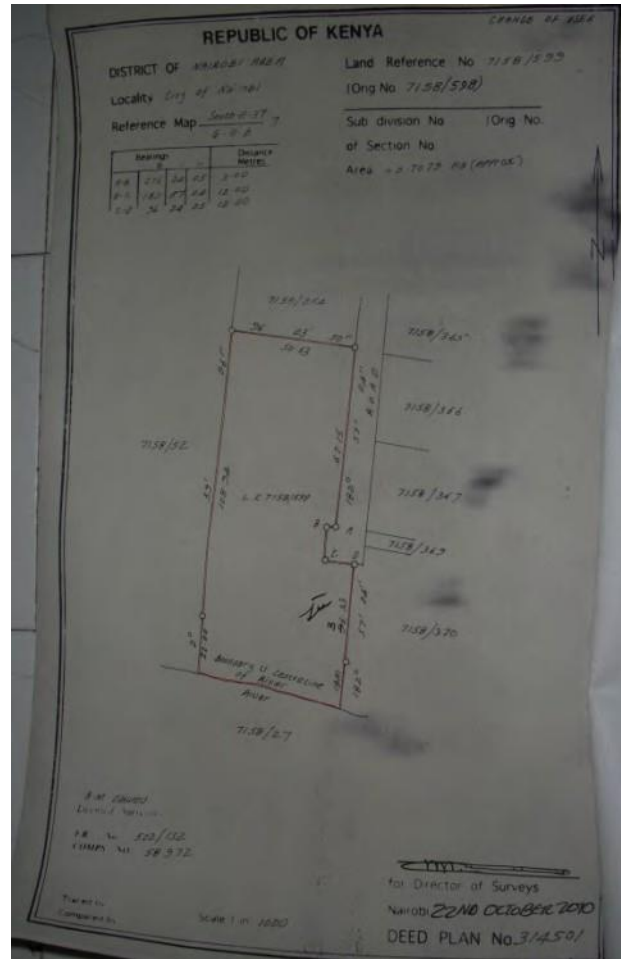


Figure 1. A sample of a sealed deed plan for change of user for Land Reference no 7158/598 with new user number 7158/599. This deed plan is sent to commissioner of lands for registration of title

3.2. Registration in the Commissioner for lands office

Title registration defines the final stage of the cadastral processes in Kenya. It begins with the submission of the deed plans to the Commissioner of Lands. On receipt of these documents, the Commissioner enters the Land Registry Number and the Deed Plan number in the correspondence file.

There are normally two stages of registration. The first one involves circulation of the document to the relevant officers to formalize on the registration. The land officer is the one in charge of the conveyancing. Conveyancing in this context means that process that a title goes through in different offices for checking. The second stage is the booking the title for registration by

the Principle registrar of titles. Booking is a term used to refer to the stage where the title is legally registered and entered in a black book as a legal document

Registry records office:

The office maintains two types of cards that assist in retrieving the file number. All information on a plot is kept in its own separate files. The two cards contain the following information: card 1: contains Surname and first name of the property owner. Then has the file number of the property. Card 2 contains plot numbers. The catalogues are arranged according to town names. Once a deed plan is received here the records officer notes the new plot numbers in the catalogue. For subdivision they look for the old numbers to get the old files then open new cards and new files for the each plot.

For a new grant survey the file already exists. The officer in charge retrieves this file and pits all the documents.

The records officer forwards the file to the land officers who then forward it to SPRO (Senior plans Records office). The file is brought here for noting that it has been surveyed and to note the survey numbers. The officer in charge receives the file with the deed plan attached in it and also the copy of the allotment letter. Initially a copy of survey plan was always kept in this office but it is no longer compulsory to keep the copy. Currently there is computerization of the information in the office The officer requests for a copy of survey plan either from the owner or director of survey. And sometimes check against the existing maps. The Letter of allotment is noted and the file number marked in the map and also confirmation that it is the same file they have.

They go through the file and if there is a discrepancy for example the plot surveyed is not the one allotted they forward the file to the land officer with a written comment to be returned for correction to the person in charge. For example if the area surveyed is greater than the area allotted or the shape differs from the physical development plan. This means the query is sent back to the survey of Kenya for clarification

If the file is correct a new card is opened and information filled in it. For a subdivision survey the officer in charge opens new cards and closes the old one. She also fills a status form that SPRO has seen the file. The officer in charge takes the file and forwards to the Land officer.

The land officer also sends a land rent request and land rates requests to the accounts office. The land officer the issues all the allotments letters for each plot. The allotments require all payments for example charges on rent and rates. This can be done in parts. This includes also the stamp duty and registration fee. Only when all the outstanding balance is fully settles that the registration proceeds.

The land officer receives the file and forwards the file to the registrar of titles with for preparation of a new title. Registrar of titles gives the instruction to typists on how the title should be done. He normally drafts a form with details to be entered. The typist uses the standard title form from the government printers. The typist forwards the drafted form to the registrar of titles to confirm if it has been done properly. Registrar forwards to the land officer.

The land officer confirms that the tile is in order and ensures that the correct information has been typed. Once confirmed it becomes a document. Land officer fills a forwarding form and forwards together with the title for circulation to the Senior Land Officer Senior Land Officer Who Signs the form and forwards to Assistant Commissioner for Lands. Assistant Commissioner for Lands Signs the form and forwards to Senior Assistant Commissioner for Lands.

Senior Assistant Commissioner for Lands Signs the form and forwards to Deputy Commissioner for Lands. Deputy Commissioner for Lands Signs the form and forwards to Commissioner for Lands. Commissioner for Lands signs the form and the title and forwards the two to the chief land registrar. Chief land registrar gives the registrar of titles to attest the commissioner signature and assess the stamp duty and forwards to the registrar of titles and signs the form.

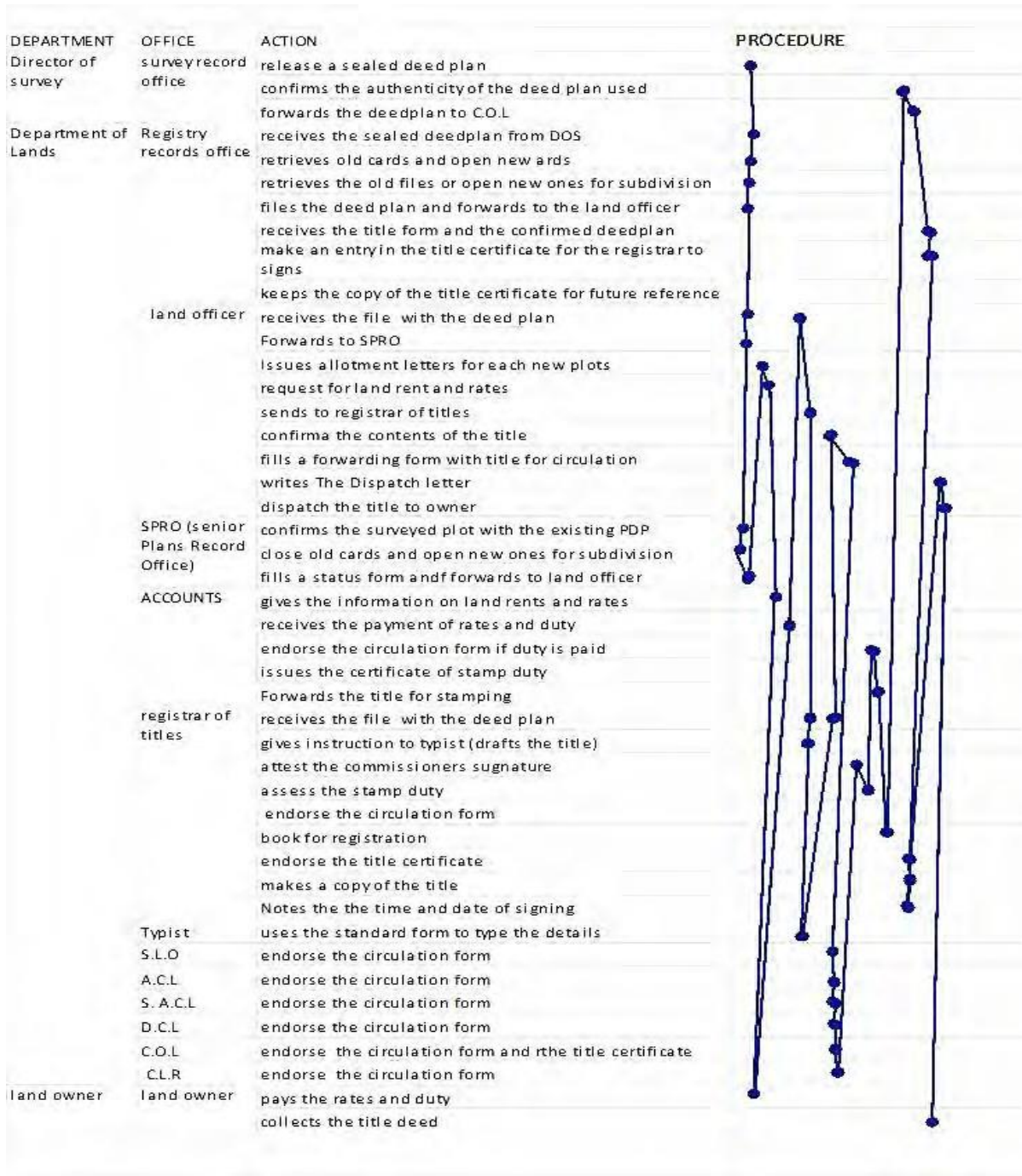


Figure 2 Summarized Process of title registration as adopted from De Soto, H. (2000), source author.

Registrar of Title signs the form and then forwards to the Accounts department.

Accountant signs the form. To confirm if all duties have been paid and was confirmed he issues a certificates of stamp duty collection and is forward the

title for stamping. If it is leasehold it is taken to the land rent office to confirm if rent is paid.

After stamping it goes back to the registrar of title to book for the registration, then it is sent to the director of survey to confirm the authenticity of the deed plan. In survey of Kenya the officer in charge of issuing

deed plan numbers confirms the number and the officer in charge of checking deed plan checks against the survey plan if the deed plan compares to the survey plan number and the seed plan copy in the store, then forwards to the commissioner of lands.

The title is form is received in the registry and the clerks make an entry in the title for the registrar to sign. The registration is completed. The registrar signs the title, notes time and Date and the tile becomes a legal document. A copy is done and kept in the registry office for future references.

The title is ready for collection. It is forwarded to the land officer who writes the Dispatch letter .It should be sent to the owner using the postal address but it is normally collected from the registrar office by the land owner or his lawyer for security purposes.

Figure 2 shows there are about 45 steps involved in the registration of titles. There are so many actors involved in order to check the registration. Some of these actors are not necessary. There is also repetition of duties for example returning the deed plan to the director of survey to check authenticity. The more the steps the longer the title takes before it is complete. It was not possible to document how long the process takes because it is determined by many factors chief among them being communication between offices. The researcher came across a file that had taken many years in SPRO because the survey was carried out centrally to the approval. The process can take months and sometimes years.

4. CONCLUSION

The Bogor–Declaration [UN-FIG, 1996] has emphasized that without a modern land registration system, issues such as poverty reduction and economic recovery strategy for wealth and employment creation in any nation will remain a mirage. The Registration of Titles Act achieves most of the goals and requirement of good registration system such as security of tenure as discussed by Mattsson, H. (2004) , since the registration offers compensation to the people who suffer loss due to insufficiency in the registry. There was however no record of any individual enjoyed such a right. The process is formed in such a way that if properly followed it would ensure security of tenure.

The main draw back in the registration of the Registration of Titles Act is the time. This study only involved the final stage of the process that has been

found to take as much as many years. The main complaint is due to improper communication system from the office to individual owners and also between the government officers. For example if a query is issued by one of the officers during registration and this officer requires the director of survey, there is no proper mode of communication strategies laid down.

Result of this has been very many property owners flopping into the land offices to ‘follow up their jobs’ and this has contributed much to corruption. This has thus increases the cost of registration. As a result of these frustrations, there have been very many properties that are not registered and has led to people forming their own registration mechanism.

Such mechanism include, the property owners does a subdivision to a property and issues a deed document to the buyers. These documents are referred to as ‘share certificates’. Since the new acts do not recognize registration of this documents any more, then the document that a buyer holds does not guarantee security of title, hence development on this properties is minimal. This has lowered investments in the land. It has also led to increase in disputes due to double selling of properties and even fraud since one can sell only share certificates to land they do not own without a proper check.

This study recommended that a review of the system of registration by registered land Act should be done and also a research done to evaluate why the conversion from registered titles Act to Registered land Act has been slow despite the many advantages associated with latter that includes a higher speed of registration process. Larsson (1991) recommended that developing countries should use progressive systems and suggests different types of simplification which are available. This means that when a new cadastral/land registration system is introduced, or an old improved, it should be designed such that it can be upgraded easily.

There are also so many actors in the process of registration. This study also recommends that there be a study to evaluate the process of planning and surveying of properties before title are issued and recommend on improvement of the same.

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