

Legal procedures guiding purchase of land in Tanzania.

AS pointed out in our previous article on land disputes in Tanzania, there is increase of land disputes in various parts of the country, particularly when it comes to ownership.

One of the reasons for this is the non-compliance with the law and procedures during purchase of land by a person or company. Today, we shall share our practical experiences in dealing with purchase of land transactions in Tanzania.

The experiences come from handling land purchase transactions for more than 20 years, including both complex and simple transactions in all levels, from the vendor to government offices and in courts of law namely District Land and Housing Tribunal, High Court of Tanzania and Court of Appeal.

What is shared here comprise the best practices and procedures in our jurisdiction and upon compliance with the same, then huge number of land disputes will be reduced or avoided in our country.

For the purposes of addressing the issue adequately, we shall categories land in Tanzania into two: surveyed land and un-surveyed land. In this part one, we shall deal with surveyed land and will deal with the other category in the next article.

Purchase of surveyed land is easier than un-surveyed land for one reason: records of that land are readily available including its allocation of use and the owner or vendor along with its size due to the existence of the land register maintained by the registrar of titles at the ministry of land.

One thing to note which makes Tanzania different from other jurisdictions is that whatever is affixed to the land belongs to the land owner, commonly referred to in latin maxim “quicquid plantatur solo,solo cedit”.

We wish to point out this because many people have this notion that they could sell only the land and not the development or the house on it. Once you sell either the house or the land and complete transfer processes of the same to the purchaser, then one cannot get back and allege that payment made was for the house only or land only because anything erected on the land belong to the owner of that land and you cannot separate them.



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Business transaction of purchasing land normally commences either by the vendor approaching the purchaser directly or through advertisement or in any other ways but first and foremost obligation of the purchaser is to conduct careful and extensive due diligence on the status of the land intended to be purchased.

It is trite law that the buyer is required to be aware of the property he or she intends to purchase in the sense that due diligence is mandatory to be conducted before purchasing a property.

The principle of “buyer be aware” is reflected in Section 34 of the Land Registration Act Cap 334 whereby the law requires every purchaser of land to be presumed to have notice of the land purchased, whether it is attached with any issues or not.

There is no hard and fast rule to determine what is required to be done when due diligence is conducted but it include various items with the view of depicting whether the property to be purchased is free from any encumbrance or not.

The first stage, after establishing preliminary issues such as purchase price, size of the land, time frame for due diligence and other many issues, is signing of letter of intent which contains strict or binding terms and conditions which shall guide such purchase, particularly when the transaction in question is a complex one involving substantial amount of money.

Why is there a need for letter of intent at early stage?! The answer because due diligence is not an issue which can be done in a single day and it is always a costly engagement which in most cases incurred by the purchaser.

Therefore, in order for the purchaser to bind the vendor from changing his or her mind on the proposed sale, the letter of intent is advisable to be in place before commencement of the due diligence process.

It is a matter of principle that good information is costly. Therefore, in order to be properly guided and protected, the process should be properly documented with probable consequences in the event one of the parties to the transaction defaults the process.

Second stage is the relevance of carrying due diligence and how the process can be undertaken on purchasing land. Non-compliance with some basic issues in the process is always among the sources of land disputes.

Relevance of this process is to determine whether there are any encumbrance attached to the landed property intended to be purchased such as caveat, mortgage or notice of deposit or whether the right of occupancy has been revoked or in the process of being returned to the president of united republic of Tanzania, the actual location of the property and boundaries among many others.

Once you are aware of the status of the property intended to be purchased, you are in a position to either proceed with transaction or not. For example when official search depicts that there is notice of deposit, it means the title deed of the land will be in the custody of another person who registered the said encumbrance or in case of caveat, it means another person is interested in that land so the process cannot proceed without their involvement.

The law requires due diligence to be conducted but the manner of conducting it and to what extent is left to land experts. In whatever possible means, diligence should be conducted into two phases: the first phase to establish the authenticity of the documents or right of occupancy through the office of the registrar of title at the ministry of land by lodging an official search and sometimes in case records are not traced or found in the registrar’s office, they may advise you to do the same at the municipal level where the land is located.

This is because in most cases, the process of surveying land sometimes commences at the municipal level where that land is located and records are later on dispatched to the ministry of land.

Therefore, an official search will provide proper details of the land in question. Search relied upon should be recent one and we do advise that it should be done at the request of the purchaser and not emanate from the one previously done by any other person.

The third phase is to make physical due diligence on the land intended to be purchased. Some people do not take this phase seriously thinking that having an official search from the ministry of lands is sufficient for them to proceed with preparation of the required legal disposition documents for endorsement between the parties ready to commence transfer processes.

This is not right at all. Physical diligence is of paramount importance unless you are satisfied with the land you are purchasing or you are familiar or have known the vendor for some time.

It is important to involve registered professional surveyor in dealing with physical diligence, particularly when transaction is complex and involves huge amount of money. Professional surveyors are responsible for translating the data available in the certificate of right of occupancy namely beacons and other details so that the purchaser can be actually aware that what is in the right of occupancy is the one physical land.

We emphasize that this be done because we have experienced or handled various land disputes in courts of laws in which the place shown by the vendor and actually evidenced by the official

search from the registrar of titles is not the one reflected in the right of occupancy.

Further, sometimes issues of trespass or boundaries cannot be revealed through official search secured at the land registry but only when physical diligence is conducted. Therefore, professional surveyor who can translate details physically is of much importance during physical due diligence before the purchaser opts to enter into sale agreement.

The fourth step is documentation stage which is very normal. Once the purchaser has all the above facts in his or her possession, all required documents should be in prepared and placed for the purchaser and vendor to sign the same.

It is a mandatory requirement that sale transaction of land should be in writing so that the same can be enforceable. Sale agreement along with other land forms such as deed of transfer of right of occupancy, notification for approval of disposition and application for approval of disposition are crucial.

Sometimes, consent from the spouse in case the land sold is a matrimonial property may be required. The other paramount document which needs to be included is the valuation report which provides the actual value of the land and its development. This along with sale agreement provide basis of paying some government taxes such as stamp duty, capital gain and other related costs.

There are other legal processes and procedures which need to be considered keenly by a professional lawyer handling land purchase transaction such as mode of payments of the purchase consideration, payment of duties and others.

Note: The material and information contained in this article are for general information purposes only. They only provide either elementary or basic legal knowledge on the above subject. Anyone considering legal action should consult an experienced lawyer to understand current laws and how they may affect a case in question.