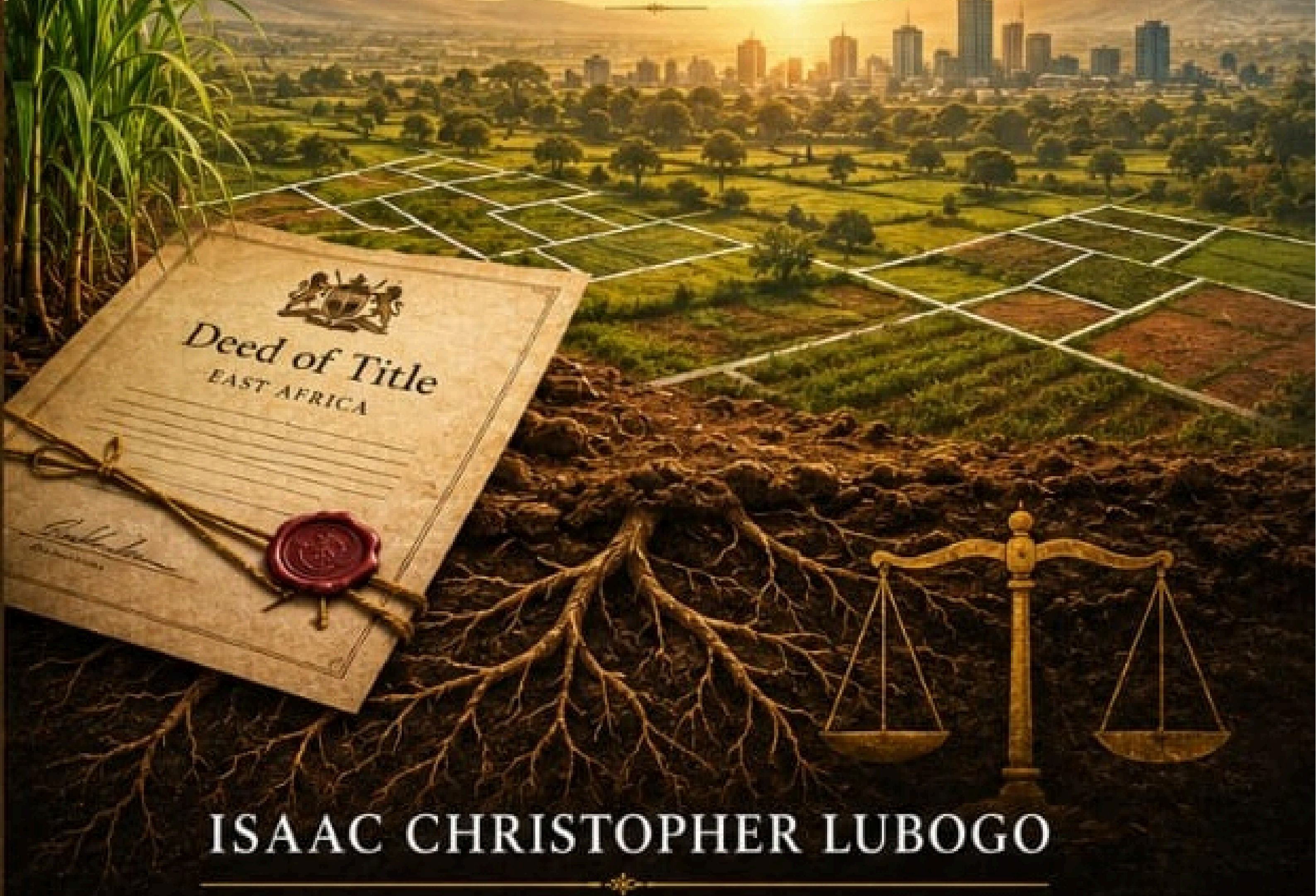
VOLUME ONE

LAND TRANSACTIONS IN EAST AFRICA

THE ROOTS AND THE DEED

History, Law, Investment, Competition and the Future of the Industry



ISAAC CHRISTOPHER LUBOGO

SUIGENERIS CONSULTANCY, KAMPALA

LAND TRANSACTIONS IN EAST AFRICA

A Comparative Legal Practice Guide

VOLUME ONE

Based on Updated Jurisprudence (2026)

Covering Uganda, Kenya, Tanzania, Rwanda, Burundi and South Sudan

With Reference to EAC and International Standards

ISAAC CHRISTOPHER LUBOGO

Suigeneris Publishers
Bukandula Tower, Plot 15, Rubaga Road, Kampala, Uganda

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This work is intended as a comparative practice and study guide on land law across the East African Community. It does not constitute legal advice for any specific transaction or jurisdiction. Readers should consult a qualified legal practitioner licensed in the relevant jurisdiction in relation to any specific matter, and verify current statutory citations, cap numbers, and case law against primary sources before relying on them, as land law reform is active across the region.

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To the communities of East Africa
whose relationship with land predates every statute,
and to the practitioners who must reconcile the two.

Foreword

Land law in East Africa sits at the intersection of custom, colonial inheritance, and modern constitutional promise. Nowhere is this tension more visible than in the layered tenure systems examined in this volume — from Uganda's mailo land to Kenya's community land, from Tanzania's village land to the customary systems still governing the majority of land across the region in practice if not always in registered title.

This volume was written to give the working practitioner a single comparative reference across six jurisdictions, organised so that a reader can move from the historical foundations of a tenure system to the precedent document needed to complete a transaction, without losing sight of how each jurisdiction's approach differs from its neighbours.

It is offered to advocates, land officers, notaries, judicial officers and students across the East African Community, in the hope that clearer comparative understanding leads to more secure land transactions and fewer disputes.

The Publisher

Preface

This First Edition sets out, across eleven parts and forty-six chapters, a comparative treatment of land transactions law in Uganda, Kenya, Tanzania, Rwanda, Burundi and South Sudan. Each chapter follows a consistent comparative structure, moving from doctrinal foundations through country-specific treatment to the practical and dispute-resolution dimensions of the topic, and the volume closes with a comprehensive library of document templates and precedents for use across the region.

Land law across the East African Community is in active reform. Cap numbers are renumbered, statutory instruments are amended, and Commercial and Land Court jurisprudence continues to develop in each jurisdiction. Readers should treat the statutory citations in this volume as a reliable starting point for research rather than a final authority, and should verify current cap numbers, amendment status and case citations against each jurisdiction's official Gazette and law reports before relying on them in a live transaction.

Isaac Christopher Lubogo

Suigeneris Consultancy, Kampala

Contents

List of Abbreviations

EAC	East African Community
EACJ	East African Court of Justice
REIT	Real Estate Investment Trust
KYC	Know Your Customer
AML	Anti-Money Laundering
GPS	Global Positioning System
NGO	Non-Governmental Organisation
ADR	Alternative Dispute Resolution
UN	United Nations
AU	African Union
GDPR	General Data Protection Regulation (EU)

Table of Legislation

Legislation referred to across the six jurisdictions covered in this volume, consolidated and alphabetised. Cap numbers vary by jurisdiction and by the date of the relevant consolidation; readers should verify the current cap number and amendment status in each jurisdiction before citing.

- The Agriculture Act, Cap 220
- The Agriculture Act, Cap 286
- The Arbitration Act, Cap 15
- The Arbitration and Conciliation Act, Cap 4
- The Arbitration and Mediation Act, 2020
- The Banking Act, Cap 488
- The Banking and Financial Institutions Act, 2006
- The Capital Markets Act, Cap 485
- The Children Act, Cap 59
- The Community Land Act, 2016
- The Companies Act, 2012
- The Companies Act, Cap 212
- The Contract Act, 2008
- The Contracts Act, 2010
- The Data Protection and Privacy Act, 2019
- The EAC One Stop Border Posts Act, 2016
- The Electronic Signatures Act, 2011
- The Electronic Transactions Act, 2020
- The Environmental Management Act, Cap 191
- The Financial Institutions Act, 2004
- The Indian Transfer of Property Act, 1882
- The Judicature Act, Cap 13
- The Land Act, 2009
- The Land Act, Cap 227
- The Land Control Act, Cap 302
- The Land Registration Act, Cap 334
- The Law of Contract Act, Cap 23
- The Law of Contract Act, Cap 345
- The Law of Marriage Act, Cap 29
- The Limitation Act, 2009
- The Limitation Act, Cap 80
- The Limitation Act, Cap 89
- The Limitation of Actions Act, Cap 22
- The Local Government Act, 2009
- The Local Government Act, Cap 243
- The Mediation Act, 2020
- The Mediation Act, 2023

- The Mortgage Act, 2009
- The National Environment Act, 2019
- The National Environment Act, Cap 153
- The Penal Code Act, Cap 120
- The Personal Data Protection Act, 2022
- The Registration of Titles Act, Cap 230
- The Rent Act, Cap 296
- The Rent Restriction Act, Cap 230
- The Rent Restriction Act, Cap 296
- The Sectional Properties Act, 1987
- The Sectional Properties Act, 2020
- The Village Land Act, 1999

Table of Cases

The cases below are the principal regional and international authorities referred to in this volume, particularly in relation to indigenous and minority land rights and EAC institutional matters. Domestic land case law in each jurisdiction is extensive and is referred to in the text of the relevant chapter; a full national table of cases for each jurisdiction is beyond the scope of a single comparative table and should be developed by reference to each country's law reports.

- Anyang' Nyong'o and Others v Attorney General of Kenya and Others, EACJ Reference No. 1 of 2006
- Plaxeda Rugumba v Secretary General of the East African Community, EACJ Reference No. 8 of 2010
- Endorois Welfare Council v Kenya, African Commission on Human and Peoples' Rights, Comm. No. 276/2003
- Ogiek v Kenya, African Court on Human and Peoples' Rights, Application No. 006/2012 (2017)
- Sengwer v Kenya (African Commission on Human and Peoples' Rights, pending)

A Note on This Edition

This First Edition sets out all forty-six chapters of the working manuscript across the eleven parts of the volume. The Table of Legislation, Table of Cases, Glossary and Subject Index were prepared by the publisher to accompany the author’s text, since the working manuscript did not include these reference sections; the Table of Legislation in particular consolidates citations appearing across all six jurisdictions and should not be read as a jurisdiction-specific table. Footnoted legislation reflects Act names as they appear in the manuscript at first mention per chapter. Before this edition goes to print, a qualified reviewer in each jurisdiction should confirm current cap numbers, amendment status, and case citations against the applicable Gazette and law reports.

Part I: Foundations of Land Law in East Africa

Chapter 1: Historical Evolution of Land Tenure Systems

1.1 Introduction

The land tenure systems of East Africa represent one of the most complex and contested areas of legal practice in the region. Understanding the historical evolution of these systems is essential for any legal practitioner advising on land transactions, as the historical context determines the legal character of land rights, the applicable regulatory framework, and the potential risks associated with any transaction.

This Chapter traces the evolution of land tenure from pre-colonial customary systems through colonial imposition to the post-independence and contemporary constitutional frameworks. The comparative analysis covers Uganda, Kenya, Tanzania, Rwanda, Burundi, and South Sudan, with reference to the East African Community (EAC) harmonization agenda.

1.2 Pre-colonial Customary Land Tenure

1.2.1 The Nature of Customary Land Rights

Before colonial intervention, land in East Africa was held under diverse customary systems that shared certain fundamental characteristics:

(a) Communal Ownership: Land was generally held communally by clans, families, or ethnic groups, with individual rights being derivative of group membership.

(b) Inalienability: Land could not be permanently alienated outside the community. Transfers were permitted within the community subject to customary rules and the approval of elders or traditional authorities.

(c) Multiple and Overlapping Rights: Different members of the community held different rights in the same parcel of land — the right to cultivate, the right to graze, the right to harvest trees, and the right to bury the dead.

(d) Sacred and Ritual Significance: Land was not merely an economic asset but had spiritual, cultural, and ancestral significance.

1.2.2 Regional Variations in Customary Tenure

UGANDA: The Baganda had the Kabaka (king) as the ultimate owner of all land, with chiefs (Bakungu) administering land on his behalf. The Batoro and Bunyoro had similar systems. The Ankole had the Mugabe as the paramount ruler with control over pasture lands. The northern and eastern regions had more democratic clan-based systems.

KENYA: The Kikuyu had a system where land was held by the mbari (sub-clan), with individual families having cultivation rights. The Maasai practiced transhumant pastoralism with communal grazing rights. The Luo had a system based on the gweng' (village) with the ruoth (chief) as the land allocator.

TANZANIA: The Sukuma had a system of village land held under the authority of the village head. The Chagga had intensive agricultural systems with well-defined individual and family rights. The Maasai in Tanzania had similar pastoral systems to their Kenyan counterparts.

RWANDA: The pre-colonial system was highly centralized under the mwami (king), with land allocated through the ubuhake (cattle clientship) and uburetwa (services) systems. The 1950s reforms and post-genocide land policies have radically transformed this system.

BURUNDI: Similar to Rwanda, with the mwami as the central authority and a hierarchical system of land allocation through the ganwa (princes) and chiefs.

SOUTH SUDAN: Highly decentralized systems with land held by tribes and clans. The Dinka, Nuer, and other groups had complex customary systems that remain highly relevant today, especially given the weakness of statutory frameworks.

1.3 Colonial Impact on Land Tenure

1.3.1 The Colonial Land Grab

The colonial period (roughly 1890s-1960s) fundamentally transformed land tenure in East Africa through:

(a) Crown Lands Proclamations: The colonial powers declared all "waste and unoccupied lands" as Crown Lands, effectively dispossessing indigenous communities of vast territories.

(b) Creation of Freehold and Leasehold: The colonial powers introduced individual freehold and leasehold tenure, primarily for European settlers.

(c) Registration of Title: The Torrens system of registration was introduced, creating a sharp distinction between registered (statutory) and unregistered (customary) land.

(d) Native Reserves and Trust Lands: Indigenous populations were confined to "native reserves" or "trust lands," creating a dual system of land tenure that persists to this day.

1.3.2 Country-specific Colonial Land Policies

UGANDA:

- The 1900 Buganda Agreement allocated land to the Kabaka, chiefs, and the British Protectorate, creating the Mailo tenure system.
- The 1907 Crown Lands Ordinance declared all other land as Crown Land.
- The 1928 Busulu and Envujo Law regulated landlord-tenant relations on Mailo land.
- The 1962 Independence Constitution and the 1967 Republican Constitution nationalized Mailo land and converted it to statutory leasehold, but the 1995 Constitution restored Mailo tenure.

KENYA:

- The 1902 Crown Lands Ordinance declared all land as Crown Land.
- The 1915 Crown Lands Ordinance extended this to include African-occupied land.
- The 1920s-1930s saw the creation of Native Reserves and the White Highlands.
- The Swynnerton Plan (1954) promoted individual land tenure and registration in African areas.
- The 1963 Independence Constitution and the 1965 Land Adjudication Act continued the process of individualization.

TANZANIA:

- German colonial rule (1884-1916) introduced plantation agriculture and expropriated land for European settlers.
- British rule (1916-1961) continued the German policies.
- The 1923 Land Ordinance declared all land as Public Land.
- Post-independence, the Arusha Declaration (1967) and the 1969 Land Reform Act nationalized all land, creating the Ujamaa villages.
- The 1999 Land Act and Village Land Act reformed the system, recognizing village land and general land.

RWANDA:

- German (1897-1916) and Belgian (1916-1962) colonial rule centralized land administration.
- The 1950s land reforms (under Belgian administration) introduced individual land registration.
- Post-genocide (1994), the 2004 National Land Policy and the 2013 Organic Land Law reformed the system, establishing a unified land tenure system.

BURUNDI:

- German and Belgian colonial rule introduced similar centralization.
- Post-independence conflicts have severely disrupted land administration.
- The 2011 Land Code attempts to modernize the system.

SOUTH SUDAN:

- Anglo-Egyptian Condominium rule (1898-1956) applied Sudanese land laws.
- The 1925 Land Settlement and Registration Ordinance introduced registration.
- Post-independence (2011), the 2009 Land Act and the Transitional Constitution provide the framework, but implementation is weak due to ongoing conflict.

1.4 Post-independence Land Reforms

1.4.1 The Independence Settlement

At independence, most East African countries inherited dual land tenure systems:

- Statutory tenure (freehold, leasehold, registered customary) for a minority
- Unregistered customary tenure for the majority

The post-independence period saw various approaches to addressing this inequity:

(a) Nationalization (Tanzania, Uganda under Obote I and Amin): All land was declared public land, with the state as the ultimate owner.

(b) Land Adjudication and Consolidation (Kenya): Individualization and registration of customary land.

(c) Gradual Reform (Rwanda, Burundi): Attempts to modernize land administration while recognizing customary rights.

1.4.2 The Constitutional Era (1990s-present)

The 1990s saw a wave of constitutional reforms across East Africa that restructured land tenure:

UGANDA (1995 Constitution):

- Article 237 vests land in the citizens of Uganda.
- Recognizes four tenure systems: Customary, Freehold, Mailo, and Leasehold.
- Establishes the Uganda Land Commission and District Land Boards.
- The 1998 Land Act operationalizes these provisions.

KENYA (2010 Constitution):

- Article 61 classifies land as Public, Community, or Private.
- Article 62 defines public land.
- Article 63 establishes community land.
- Article 64 defines private land.
- The 2012 Land Act, Land Registration Act, and National Land Commission Act operationalize these provisions.

TANZANIA (1977 Constitution, as amended):

- Article 24 declares all land as public land vested in the President as trustee.
- The 1999 Land Act and Village Land Act provide the statutory framework.
- The 2019 amendments to the Land Act and Village Land Act introduced significant changes, including restrictions on foreign land ownership.

RWANDA (2003 Constitution, as amended):

- Article 29 recognizes private property rights.
- The 2013 Organic Land Law No. 08/2013 establishes a unified land tenure system.
- The 2021 Law No. 027/2021 on Land further modernizes the framework.

BURUNDI (2005 Constitution, as amended):

- Article 38 recognizes private property.
- The 2011 Land Code (Code Foncier) provides the statutory framework.

SOUTH SUDAN (Transitional Constitution 2011, as amended):

- Article 28 recognizes private property.

- The 2009 Land Act and Local Government Act provide the framework.
- The 2022 National Land Policy attempts to address post-conflict land issues.

1.5 The East African Community and Land Harmonization

1.5.1 The EAC Treaty Framework

The Treaty for the Establishment of the East African Community (1999, as amended) does not specifically address land law harmonization. However:

- Article 5(3)(c) on cooperation in agriculture and food security implicitly touches on land.
- Article 5(3)(f) on natural resources management includes land.
- The EAC Common Market Protocol (2010) requires free movement of goods, services, capital, and labor, which has implications for land rights of EAC citizens.

1.5.2 The EAC Land Policy (draft)

The EAC has been developing a Regional Land Policy to harmonize land governance across the member states. Key areas of focus include:

- Cross-border land transactions
- Harmonization of land registration systems
- Recognition of pastoral land rights
- Climate change and land degradation
- Land rights of women and vulnerable groups

1.5.3 The African Union Framework and Guidelines on Land Policy in Africa

The AU Framework and Guidelines on Land Policy in Africa (2009), endorsed by all EAC member states, provides a continental standard for land policy reform. Key principles include:

- Securing land rights for all
- Ensuring equitable access to land
- Promoting sustainable land use
- Establishing efficient land administration
- Ensuring transparent and accountable land governance

1.6 Contemporary Challenges in Land Tenure

1.6.1 Urbanization and Land Scarcity

Rapid urbanization across East Africa has created intense pressure on land:

- Kampala, Nairobi, Dar es Salaam, Kigali, and Juba are experiencing exponential growth.
- Informal settlements (slums) now house significant proportions of urban populations.
- Land speculation has driven prices beyond the reach of most citizens.

1.6.2 Land Grabbing and Large-scale Investments

The 2007-2008 global food crisis and subsequent biofuel boom led to a wave of large-scale land acquisitions in East Africa:

- The Oakland Institute and other researchers have documented extensive land deals in Ethiopia, Tanzania, Uganda, and South Sudan.
- Many of these deals have been criticized for lack of transparency, inadequate consultation, and insufficient compensation.
- The Voluntary Guidelines on Responsible Governance of Tenure (VGGT) provide international standards, but implementation is weak.

1.6.3 Climate Change and Land Degradation

Climate change poses existential threats to land tenure in East Africa:

- Desertification in northern Kenya, Uganda, and South Sudan
- Flooding in low-lying areas
- Changing rainfall patterns affecting agricultural productivity
- The need for climate-resilient land use planning

1.6.4 Conflict and Displacement

Land-related conflicts remain endemic:

- Post-election violence in Kenya (2007-2008) had significant land dimensions
- The Lord's Resistance Army conflict in northern Uganda displaced hundreds of thousands
- The South Sudan civil war (2013-2018) has devastated land administration
- Inter-communal conflicts in Kenya, Uganda, and Tanzania are often resource-based

1.7 Conclusion

The historical evolution of land tenure in East Africa has created complex, layered, and often contradictory legal frameworks. For the legal practitioner, this means:

(a) Due Diligence is Critical: Any land transaction requires thorough investigation of the historical and legal basis of the title.

(b) Customary Law Remains Relevant: Even where land has been registered, customary law may continue to govern certain aspects of land rights, particularly in relation to family and clan land.

(c) Constitutional Protections are Paramount: The constitutional provisions on land are the starting point for any legal analysis.

(d) Regional and International Standards Apply: EAC law, AU frameworks, and international human rights law increasingly influence domestic land law.

(e) Emerging Challenges Require Innovative Solutions: Climate change, urbanization, and digital technology are creating new legal challenges that require creative legal thinking.

Chapter 2: Constitutional Framework for Land Rights

2.1 Introduction

The constitutional framework for land rights in East Africa represents the highest level of legal protection for land rights and the foundation upon which all statutory and customary land law is built. This Chapter provides a detailed comparative analysis of the constitutional provisions governing land in each EAC member state, with reference to the jurisprudence of the courts and the emerging regional standards.

2.2 Uganda

2.2.1 Constitutional Provisions

The Constitution of the Republic of Uganda, 1995 (as amended) contains extensive provisions on land:

ARTICLE 237: LAND OWNERSHIP (1) Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution. (2) Notwithstanding clause (1) of this article—

(a) the Government or a local government as determined by Parliament by law, shall hold in trust for the people and protect natural lakes, rivers, wetlands, forest reserves, game reserves, national parks and any land to be reserved for ecological and touristic purposes for the common good of all citizens;

(b) non-citizens may acquire leases in land in accordance with the laws prescribed by Parliament after the first ten years of the coming into force of this Constitution; and

(c) Parliament shall make laws regulating the relationship between the landlord and tenant on registered land in accordance with the provisions of this Constitution. (3) Land in Uganda shall be owned in accordance with the following land tenure systems—

(a) customary;

(b) freehold;

(c) mailo; and

(d) leasehold.

ARTICLE 238: UGANDA LAND COMMISSION (1) There shall be a Uganda Land Commission. (2) The Commission shall have such functions as may be prescribed by Parliament.

ARTICLE 239: FUNCTIONS OF THE UGANDA LAND COMMISSION The Uganda Land Commission shall—

(a) hold and manage any land in Uganda vested in or acquired by the Government of Uganda in accordance with the provisions of this Constitution;

(b) ascertain and keep records of all land in Uganda;

(c) ascertain and keep records of all interests in land;

(d) manage any land or interests in land acquired or vested in the Government under the Land Reform Decree, 1975;

(e) manage public land and buildings;

(f) advise the Government on land policy;

(g) deal with all unregistered land; and

(h) deal with all other matters connected with land as Parliament may by law prescribe.

ARTICLE 240: DISTRICT LAND BOARDS (1) There shall be a District Land Board for each district. (2) The District Land Board shall have such functions as may be prescribed by Parliament.

ARTICLE 241: FUNCTIONS OF DISTRICT LAND BOARDS A District Land Board shall—

(a) hold and allocate land in the district which is not owned by any person or authority;

(b) facilitate the registration and transfer of interests in land; and

(c) deal with all other matters connected with land in the district in accordance with laws made by Parliament.

ARTICLE 242: LAND TRIBUNALS (1) Parliament shall by law provide for the establishment of land tribunals. (2) The jurisdiction of land tribunals shall include—

(a) the determination of disputes relating to the grant of land, the amount of premium payable and the terms and conditions of a grant;

(b) the determination of disputes relating to the amount of compensation payable for land to be acquired;

(c) the determination of disputes relating to the amount of compensation payable for land acquired compulsorily; and

(d) the determination of any other disputes relating to land between a landlord and tenant or any other person.

2.2.2 Key Jurisprudence

(a) SSEKANDI & OTHERS V. KASULE [1986] HCB 78 The Supreme Court held that the 1975 Land Reform Decree, which converted all Mailo and freehold land into leasehold, was unconstitutional because it violated the property rights provisions of the 1967 Constitution. This case was instrumental in the restoration of Mailo and freehold tenure in the 1995 Constitution.

(b) MAJ GEN. DAVID SEJJUSA V. ATTORNEY GENERAL & ANOR [2020] UGCC

10 The Constitutional Court addressed the constitutional requirement for spousal consent in land transactions, emphasizing the protection of matrimonial property rights under Article 31 of the Constitution.

(c) ATTORNEY GENERAL V. SUSAN KIGULA & OTHERS [2019] UGCC 10 While primarily a death penalty case, the Court reaffirmed the constitutional protection of property rights and the need for fair procedure in any deprivation of property.

(d) KIBANDA V. ATTORNEY GENERAL [2022] UGCC 5 The Constitutional Court addressed the powers of District Land Boards and the Uganda Land Commission, clarifying the constitutional division of land administration functions.

2.2.3 The Land Act, Cap 227 (as Amended)

The Land Act operationalizes the constitutional provisions:

- Section 2: Recognition of customary land tenure
- Section 3: Recognition of freehold tenure
- Section 4: Recognition of Mailo tenure
- Section 5: Recognition of leasehold tenure
- Section 28: Protection of lawful and bona fide occupants
- Section 29: Spousal consent requirements
- Section 30-32: Land tribunals
- Section 40-44: Land fund

2.2.4 The Registration of Titles Act, Cap 230 (as Amended)

This Act governs the registration of land titles in Uganda:

- Section 14: The Register is conclusive evidence of title
- Section 39: Registered proprietor holds subject to encumbrances
- Section 56: Rectification of the Register
- Section 59: Indemnity for errors in the Register

2.3 Kenya

2.3.1 Constitutional Provisions

The Constitution of Kenya, 2010 contains the most comprehensive constitutional provisions on land in East Africa:

ARTICLE 61: CLASSIFICATION OF LAND (1) All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals. (2) Land in Kenya is classified as—

(a) public land;

(b) community land; and

(c) private land.

ARTICLE 62: PUBLIC LAND (1) Public land is—

(a) land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date;

(b) land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease;

(c) land transferred to the State by way of sale, reversion or surrender;

(d) land in respect of which no individual or community ownership can be established by any legal process;

(e) land in respect of which no heir can be identified by any legal process;

(f) all minerals and mineral oils as defined by law;

(g) government forests, game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas;

(h) all roads and thoroughfares provided for by an Act of Parliament;

(i) all rivers, lakes and other water bodies as defined by an Act of Parliament;

(j) the territorial sea, the exclusive economic zone and the sea bed;

(k) the continental shelf;

(l) all land between the high and low water marks;

(m) any land not classified as private or community land under this Constitution; and

(n) any other land declared to be public land by an Act of Parliament.

ARTICLE 63: COMMUNITY LAND (1) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest. (2) Community land consists of—

(a) land lawfully registered in the name of group representatives under the provisions of any law;

(b) land lawfully transferred to a specific community by any process of law;

(c) any other land declared to be community land by an Act of Parliament; and

(d) land that is—

(i) lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; (ii) ancestral lands and lands traditionally occupied by hunter-gatherer communities; or (iii) lawfully held as trust land by the county governments. (3) Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held.

ARTICLE 64: PRIVATE LAND Private land consists of—

(a) registered land held by any person under any freehold tenure;

(b) land held by any person under leasehold tenure; and

(c) any other land declared private land under an Act of Parliament.

ARTICLE 65: REGULATION OF LAND USE AND PROPERTY (1) The State shall regulate land use and property in any interest in land for the purpose of promoting—

(a) sound conservation and management of the land and its resources;

(b) sound management of the environment;

(c) sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensuring the equitable sharing of the accruing benefits;

(d) sustainable and productive management of land resources;

(e) ecologically sustainable development and use of natural resources; and

(f) conservation of natural and built environments and cultural heritage.

ARTICLE 66: STATE MAY NOT DEPRIVE PERSONS OF PROPERTY (1) The State may not deprive a person of property of any description unless the deprivation—

(a) results from an acquisition of land or an interest therein or a conversion of an interest in land, or title to land, in accordance with Chapter 5; or

(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—

(i) requires prompt payment in full, of just compensation to the person; and (ii) allows any person who has an interest in or right over the property a right of access to a court of law.

ARTICLE 67: NATIONAL LAND COMMISSION (1) There is established the National Land Commission. (2) The functions of the National Land Commission shall be to—

(a) manage public land on behalf of the national and county governments;

(b) recommend a national land policy to the national government;

(c) advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;

(d) conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;

(e) initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;

(f) encourage the application of traditional dispute resolution mechanisms in land conflicts;

(g) assess tax on land and premiums on immovable property in any area designated by law; and

(h) monitor and have oversight responsibilities over land use planning throughout the country.

2.3.2 Key Jurisprudence

(a) SATTA V. REPUBLIC [2019] eKLR The Supreme Court addressed the constitutional requirement for spousal consent in land transactions, holding that Article 45(2) requires both spouses to consent to any disposition of matrimonial property.

(b) ISACK M'INANGA KIEU V. GITHAIGA M'INANGA [2018] eKLR The Court of Appeal clarified the distinction between public land and community land, emphasizing that the burden of proving community land status lies with the claimant.

(c) MOHAMMED ALI BAADI & 11 OTHERS V. ATTORNEY GENERAL & 2 OTHERS [2018] eKLR The High Court addressed the constitutional requirement for just compensation in compulsory land acquisition, holding that compensation must be paid before possession is taken.

(d) KENYA AIRPORTS AUTHORITY V. MAKADARA RESIDENTS ASSOCIATION [2021] eKLR The Court of Appeal addressed the powers of the National Land Commission in managing public land, clarifying the relationship between the Commission and other state organs.

(e) MUMO MUEKE V. KENYA SCHOOL OF LAW & 2 OTHERS [2020] eKLR The Supreme Court addressed the constitutional protection of property rights in the context of contractual disputes, emphasizing the need for fair procedure.

2.3.3 Key Statutes

(a) The Land Act, No. 6 of 2012 (as amended)

- Part II: Administration of Public Land
- Part III: Administration of Private Land
- Part IV: Conversion of Land
- Part V: Leases
- Part VI: Easements and analogous rights
- Part VII: Restrictive agreements
- Part VIII: Wayleaves
- Part IX: Compulsory Acquisition of Land
- Part X: Settlement of Disputes

(b) The Land Registration Act, No. 3 of 2012

- Repealed the Indian Transfer of Property Act, 1882
- Established a unified registration system
- Section 25: Certificate of title as conclusive evidence
- Section 26: Rectification of the register
- Section 27: Indemnity

(c) The Community Land Act, No. 27 of 2016

- Operationalizes Article 63 of the Constitution
- Establishes Community Land Assemblies and Community Land Management Committees
- Provides for registration of community land

(d) The National Land Commission Act, No. 5 of 2012

- Establishes the National Land Commission
- Provides for its functions and powers

2.4 Tanzania

2.4.1 Constitutional Provisions

The Constitution of the United Republic of Tanzania, 1977 (as amended) contains the following provisions on land:

ARTICLE 24: RIGHT TO OWN PROPERTY (1) Every person is entitled to acquire and own property, and to dispose of such property subject to the relevant laws. (2) The state authority may, for the purpose of ensuring the interests of the people, nationalize any property, provided that it does so in accordance with the procedure prescribed by law and after paying fair compensation.

ARTICLE 25: RIGHT TO WORK (While not directly on land, this article has been interpreted to include the right to access land for livelihood purposes.)

2.4.2 Key Statutes

(a) The Land Act, No. 4 of 1999 (as amended by Act No. 2 of 2004 and Act No. 7 of 2019)

- Part II: Fundamental Principles
- Part III: Classification of Land
- Part IV: General Land
- Part V: Village Land
- Part VI: Reserved Land
- Part VII: Acquisition and Forfeiture of Rights of Occupancy
- Part VIII: Disposition of Interests in Land
- Part IX: Mortgages
- Part X: Leases
- Part XI: Easements and Profits
- Part XII: Co-occupancy and Partition
- Part XIII: Adverse Possession
- Part XIV: Trespass
- Part XV: Wayleaves
- Part XVI: Land Use Planning
- Part XVII: Land Disputes

(b) The Village Land Act, No. 5 of 1999 (as amended)

- Part II: Administration of Village Land

- Part III: Village Land Use Planning
- Part IV: Transfer of Village Land
- Part V: Dispute Resolution

(c) The Land Registration Act, Cap 334 (as amended)[1]

- Governs registration of land titles
- Section 33: Certificate of title as conclusive evidence
- Section 36: Rectification of the register
- Section 38: Indemnity

2.4.3 Key Jurisprudence

(a) MATTHEW V. SINGANO [1989] TLR 215 The High Court addressed the constitutional protection of property rights, holding that the right to property includes the right to peaceful enjoyment of property.

(b) NYAMWAGE V. BRETT [1992] TLR 47 The Court of Appeal addressed the nature of granted rights of occupancy, holding that they are statutory rights that can be revoked only in accordance with the law.

(c) THE ATTORNEY GENERAL V. A.K.P. (1997) TLR 87 The Court of Appeal addressed the constitutional requirement for fair compensation in compulsory acquisition, holding that compensation must be paid promptly and must be just.

(d) LUGOE V. MWANZA CITY COUNCIL [2018] TZHC 12 The High Court addressed the powers of local government authorities in land administration, clarifying the division of powers between central and local government.

(e) KILIMO BORA V. MINISTER FOR LANDS [2020] TZCA 8 The Court of Appeal addressed the 2019 amendments to the Land Act, particularly the restrictions on foreign land ownership, holding that the amendments were constitutional.

2.5 Rwanda

2.5.1 Constitutional Provisions

The Constitution of the Republic of Rwanda, 2003 (as revised in 2015) contains the following provisions:

ARTICLE 29: RIGHT TO PRIVATE PROPERTY Every person has a right to private property, whether personal or owned in association with others. Private property, whether individually or collectively owned, is inviolable. The right to property may not be interfered with except in public interest, in cases and procedures determined by law and subject to fair and prior compensation.

ARTICLE 30: RIGHT TO WORK Every person has the right to choose the work of his or her preference and has the right to equal pay for equal work.

2.5.2 Key Statutes

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[1] The Land Registration Act, Cap 334 (as amended).

(a) Organic Law No. 08/2013 of 11/07/2013 Governing Land

- Article 3: All land is the property of the State
- Article 4: Land is classified as public or private
- Article 5: Private land can be owned through customary or written law
- Article 6: Land can be held through freehold, leasehold, or concession
- Article 7: Registration of land is mandatory

(b) Law No. 027/2021 of 10/06/2021 Governing Land

- Repealed and replaced the 2013 Organic Law
- Maintains the unified land tenure system
- Strengthens land registration requirements
- Enhances protection of women's land rights

(c) Law No. 43/2013 of 16/06/2013 Governing Matrimonial Regimes, Donations and Succession

- Article 13: Matrimonial property is owned equally by both spouses
- Article 14: Neither spouse may dispose of matrimonial property without the consent of the other

2.5.3 Key Jurisprudence

(a) REPUBLIC V. MUSABYIMANA [2015] RHC 12 The High Court addressed the constitutional protection of property rights in the context of land disputes, emphasizing the need for fair procedure.

(b) MUKAMANA V. MUKAMANA [2018] RHC 23 The High Court addressed the rights of women to inherit land, holding that the constitutional guarantee of equality applies to land rights.

(c) UWAYO V. MUNICIPALITY OF KIGALI [2020] RSC 5 The Supreme Court addressed the powers of local authorities in land administration, clarifying the limits of municipal power.

2.6 Burundi

2.6.1 Constitutional Provisions

The Constitution of the Republic of Burundi, 2005 (as amended) contains:

ARTICLE 38: RIGHT TO PROPERTY Every person has the right to property. No one may be deprived of his or her property except in the public interest and in the cases and conditions established by law, subject to fair and prior compensation.

ARTICLE 39: RIGHT TO WORK Every person has the right to freely choose his or her work.

2.6.2 Key Statutes

(a) Land Code (Code Foncier), Law No. 1/11 of 2011

- Book I: General Provisions

- Book II: Land Tenure
- Book III: Land Registration
- Book IV: Land Disputes

(b) Law No. 1/13 of 2014 on the Modification and Completion of the Land Code

- Introduces new provisions on land registration
- Strengthens protection of women's land rights

2.6.3 Key Jurisprudence

Due to the ongoing political instability and weak judicial infrastructure, there is limited reported jurisprudence on land matters. However, the Constitutional Court has addressed land rights in several decisions, emphasizing the constitutional protection of property.

2.7 South Sudan

2.7.1 Constitutional Provisions

The Transitional Constitution of the Republic of South Sudan, 2011 (as amended) contains:

ARTICLE 28: RIGHT TO ACQUIRE OR OWN PROPERTY (1) Every person shall have the right to acquire or own property as regulated by law. (2) No private property may be expropriated save by law in the public interest and in consideration for prompt and fair compensation. No private property shall be confiscated save by an order of a court of law.

ARTICLE 170: LAND TENURE (1) Land is owned by the people of South Sudan and its usage shall be regulated by the government in accordance with the provisions of this Constitution. (2) Without prejudice to the communal ownership of land, the regulation of land tenure, usage and exercise of rights in land shall be governed by this Constitution and the law.

2.7.2 Key Statutes

(a) The Land Act, 2009[2]

- Part II: Land Tenure
- Part III: Customary Land Law
- Part IV: Land Administration
- Part V: Land Use Planning
- Part VI: Land Disputes

(b) The Local Government Act, 2009[3]

- Provides for land administration at the local government level

(c) The National Land Policy, 2022

- Provides a comprehensive framework for land reform

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[2] The Land Act, 2009.

[3] The Local Government Act, 2009.

- Addresses post-conflict land issues
- Provides for restitution of land to displaced persons

2.7.3 Key Jurisprudence

Due to the ongoing conflict and weak judicial infrastructure, there is very limited reported jurisprudence on land matters. However, the Supreme Court has addressed land rights in several decisions, emphasizing the constitutional protection of property.

2.8 Comparative Analysis of Constitutional Provisions

2.8.1 Ownership of Land

Country	Constitutional Owner	Individual Ownership
Uganda	Citizens of Uganda	Yes (Freehold, Mailo)
Kenya	People of Kenya	Yes (Freehold, Leasehold)
Tanzania	Public (President as trustee)	No (Only occupancy rights)
Rwanda	State	Yes (Freehold, Leasehold)
Burundi	State	Yes (Private property)
South Sudan	People of South Sudan	Yes (Customary, Freehold)

2.8.2 Protection Against Expropriation

All EAC constitutions require:

(a) Public purpose or public interest

(b) Fair and prior compensation

(c) Due process of law

(d) Right of access to court

2.8.3 Spousal Consent and Women's Land Rights

Country	Constitutional Provision	Statutory Provision
Uganda	Article 31 (Equality)	Land Act, s. 29
Kenya	Article 45 (Family)	Land Act, s. 28; Matrimonial Property Act
Tanzania	Article 12 (Equality)	Land Act, s. 3(2)(h)
Rwanda	Article 9 (Equality)	Law 43/2013, Art. 14
Burundi	Article 13 (Equality)	Land Code, Art. 45
South Sudan	Article 16 (Equality)	Land Act, s. 12

2.9 Conclusion

The constitutional framework for land rights in East Africa reflects a complex interplay between:

(a) Colonial legacies of centralized state control

(b) Post-independence socialist and nationalist impulses

(c) Contemporary human rights and rule of law principles

(d) Regional and international standards

For the legal practitioner, the constitutional provisions are the starting point for any land transaction analysis. The following principles must be kept in mind:

1. Constitutional Supremacy: Any statute or customary practice that violates the constitutional provisions on land is void.

2. International Standards: The constitutions must be interpreted in light of international human rights instruments ratified by each state.

3. Regional Harmonization: The EAC integration agenda creates pressure for convergence in land law, particularly in relation to cross-border transactions.

4. Emerging Issues: Climate change, digital technology, and urbanization are creating new constitutional questions that courts are only beginning to address.

Chapter 3: Regional Harmonization — the EAC Context

3.1 Introduction

The East African Community (EAC) integration process has significant implications for land law and practice in the region. While land law remains primarily a domestic matter, the EAC Treaty, the Common Market Protocol, and other regional instruments create obligations that affect land transactions, particularly those involving cross-border elements.

This Chapter examines the EAC legal framework as it relates to land, identifies areas of convergence and divergence, and discusses the prospects for further harmonization.

3.2 The EAC Treaty Framework

3.2.1 Objectives and Principles (article 5)

Article 5(3) of the EAC Treaty outlines the areas of cooperation, including:

- Political affairs (5(3)(a))
- Economic and monetary affairs (5(3)(b))
- Agriculture and food security (5(3)(c))
- Natural resources and environment (5(3)(f))
- Social sectors (5(3)(g))

While land is not explicitly mentioned, it is implicit in agriculture, natural resources, and environment.

3.2.2 Free Movement of Persons (article 7)

Article 7 requires Partner States to adopt measures to achieve the free movement of persons, which has implications for:

- Land rights of EAC citizens in other Partner States
- Residence and establishment rights
- Access to land for business purposes

3.2.3 Free Movement of Goods (article 8)

Article 8 requires the removal of non-tariff barriers, which may include restrictions on cross-border land transactions.

3.3 The EAC Common Market Protocol (2010)

3.3.1 Free Movement of Persons (article 7)

Citizens of EAC Partner States have the right to:

- Enter and reside in the territory of another Partner State
- Establish themselves in business
- Access social services

This has been interpreted to include the right to acquire land for business purposes, subject to domestic laws.

3.3.2 Free Movement of Capital (article 13)

Citizens have the right to:

- Make investments in any Partner State
- Transfer capital and earnings
- Acquire and dispose of property

This explicitly includes the right to acquire land for investment purposes.

3.3.3 Right of Establishment (article 15)

Citizens have the right to:

- Establish and manage enterprises
- Set up agencies and branches
- Provide services

This includes the right to acquire or lease land for business premises.

3.3.4 Exceptions and Limitations

Article 16 allows Partner States to maintain restrictions on:

- National security
- Public order
- Public health
- Public morality

These exceptions have been used to justify restrictions on foreign (including EAC citizen) land ownership, particularly in Tanzania.

3.4 The EAC Customs Union and Land

3.4.1 The Customs Union Protocol (2005)

While primarily concerned with trade in goods, the Customs Union has implications for:

- Cross-border transportation infrastructure
- Borderland development
- Transit corridors

3.4.2 The EAC One Stop Border Posts Act, 2016

This Act facilitates cross-border trade but also has implications for land use at border posts.

3.5 The EAC Monetary Union and Land

3.5.1 The Monetary Union Protocol (2013)

The Protocol requires:

- Harmonization of monetary and fiscal policies
- Free movement of capital
- Common currency (proposed)

This will have significant implications for:

- Cross-border mortgage lending
- Real estate investment
- Land valuation and taxation

3.6 Comparative Analysis of Land Ownership by Foreigners

3.6.1 Restrictions on Foreign Land Ownership

Country	Citizens	EAC Citizens	Other Foreigners
Uganda	Freehold, Mailo, Leasehold	Leasehold (99 years)	Leasehold (99 years)
Kenya	Freehold, Leasehold	Freehold, Leasehold	Leasehold (99 years)
Tanzania	Right of occupancy	Right of occupancy (with restrictions)	Derivative right (with restrictions)
Rwanda	Freehold, Leasehold	Freehold, Leasehold	Leasehold (with restrictions)
Burundi	Private property	Private property (with restrictions)	Private property (with restrictions)
South Sudan	Customary, Freehold	Freehold (with restrictions)	Leasehold (with restrictions)

3.6.2 The Tanzania Exception

Tanzania has the most restrictive regime:

- The 2019 amendments to the Land Act and Village Land Act restrict foreign ownership of land.
- Foreign investors can only acquire land through the Tanzania Investment Centre (TIC) and must meet minimum investment thresholds.
- EAC citizens are treated as foreigners for land ownership purposes.

This has been challenged under the EAC Treaty and the Common Market Protocol, but the East African Court of Justice has not yet ruled on the compatibility of these restrictions with EAC law.

3.7 Cross-border Land Transactions

3.7.1 Legal Framework

Cross-border land transactions in the EAC are governed by:

(a) The domestic land law of the country where the land is situated (lex situs)

(b) The EAC Treaty and Protocols

(c) International treaties (e.g., COMESA, SADC)

(d) Bilateral investment treaties

3.7.2 Practical Challenges

(a) Different Registration Systems: Each country has its own land registration system, making cross-border due diligence difficult.

(b) Different Tenure Systems: The classification of land and the nature of rights differ significantly.

(c) Currency Restrictions: Exchange control regulations may restrict the repatriation of proceeds from land sales.

(d) Taxation: Capital gains tax, stamp duty, and other taxes vary and may create double taxation.

(e) Enforcement: Judgments from one EAC country may not be easily enforceable in another.

3.7.3 Best Practices for Cross-border Transactions

(a) Engage Local Counsel: Always engage qualified lawyers in both the home country and the country where the land is situated.

(b) Conduct Thorough Due Diligence: Investigate title, encumbrances, zoning, and regulatory compliance.

(c) Structure the Transaction Appropriately: Consider using local subsidiaries, joint ventures, or lease structures.

(d) Address Tax Implications: Obtain tax advice in both jurisdictions.

(e) Include Dispute Resolution Clauses: Consider arbitration under the EAC Arbitration Rules or international arbitration.

3.8 The East African Court of Justice and Land Rights

3.8.1 Jurisdiction

The East African Court of Justice (EACJ) has jurisdiction to hear disputes concerning the interpretation and application of the EAC Treaty. This includes disputes about:

- The free movement of persons and capital
- The right of establishment
- Discriminatory practices

3.8.2 Key Cases

(a) ANYANG' NYONG'O V. ATTORNEY GENERAL OF KENYA [2008] EACJ 1 The Court addressed the right of EAC citizens to participate in political processes in other Partner States, which has implications for land rights.

(b) JAMES KATABAZI & OTHERS V. ATTORNEY GENERAL OF UGANDA [2013] EACJ 1 The Court addressed fair trial rights, which are relevant to land dispute resolution.

(c) PLAXEDA RUGUMBA V. SECRETARY GENERAL OF THE EAC [2015] EACJ 5 The Court addressed the rights of EAC citizens to work in other Partner States, which includes the right to acquire land for business purposes.

(d) ATTORNEY GENERAL OF BURUNDI V. INDEPENDENT HUMAN RIGHTS EXPERTS [2012] EACJ 10 The Court addressed human rights standards in the EAC, which includes land rights.

3.9 Prospects for Harmonization

3.9.1 The EAC Land Policy (draft)

The EAC Secretariat has been developing a Regional Land Policy with the following objectives:

- Harmonize land tenure systems
- Facilitate cross-border land transactions
- Protect the land rights of mobile populations (pastoralists)
- Address climate change and land degradation
- Promote gender equality in land rights

3.9.2 Challenges to Harmonization

(a) Sovereignty Concerns: Land is a sensitive issue tied to national sovereignty and identity.

(b) Divergent Systems: The land tenure systems are too divergent to easily harmonize.

(c) Political Will: There is limited political will for deep harmonization.

(d) Capacity Constraints: Many EAC institutions lack the capacity to implement harmonization measures.

3.9.3 Areas of Potential Convergence

(a) Land Registration: Harmonization of registration procedures and standards.

(b) Cross-Border Transactions: Simplification of procedures for EAC citizens.

(c) Dispute Resolution: Establishment of regional land dispute resolution mechanisms.

(d) Environmental Standards: Harmonization of land use planning and environmental standards.

3.10 Conclusion

The EAC integration process creates both opportunities and challenges for land law and practice in East Africa. While deep harmonization remains unlikely in the near term, legal practitioners must be aware of:

1. The rights of EAC citizens under the Common Market Protocol 2. The restrictions on foreign land ownership in each country 3. The practical challenges of cross-border transactions 4. The potential for EACJ jurisdiction in land-related disputes 5. The emerging regional standards and best practices

Chapter 4: International and Regional Human Rights Standards

4.1 Introduction

International and regional human rights law provides an important framework for the protection of land rights in East Africa. This Chapter examines the relevant international and regional instruments, their status in domestic law, and their impact on land transactions and disputes.

4.2 The Universal Declaration of Human Rights (1948)

ARTICLE 17: (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.

While not legally binding, the UDHR has influenced the constitutional provisions of all EAC member states and is considered part of customary international law.

4.3 The International Covenant on Civil and Political Rights (1966)

ARTICLE 1: SELF-DETERMINATION All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

This has been interpreted to include the right to control natural resources, including land.

ARTICLE 17: RIGHT TO PRIVACY No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.

This protects the home and, by extension, land on which the home stands.

4.4 The International Covenant on Economic, Social and Cultural

RIGHTS (1966)

ARTICLE 11: ADEQUATE STANDARD OF LIVING (1) The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

This has been interpreted by the Committee on Economic, Social and Cultural Rights to include the right to adequate housing and, by extension, access to land.

ARTICLE 15: CULTURAL RIGHTS (1) The States Parties to the present Covenant recognize the right of everyone—

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

This protects the cultural dimension of land rights, particularly for indigenous peoples.

4.5 The Un Declaration on the Rights of Indigenous Peoples (2007)

ARTICLE 26: LANDS, TERRITORIES AND RESOURCES (1) Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. (2) Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. (3) States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

While not legally binding, this Declaration has influenced domestic law and jurisprudence in East Africa, particularly in relation to pastoralist and hunter-gatherer communities.

4.6 The African Charter on Human and Peoples' Rights (1981)

ARTICLE 14: RIGHT TO PROPERTY The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

ARTICLE 21: RIGHT TO DISPOSAL OF NATURAL RESOURCES (1) All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. (2) In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

ARTICLE 22: RIGHT TO DEVELOPMENT (1) All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

4.7 The African Charter on the Rights and Welfare of the Child (1990)

ARTICLE 20: PARENTAL RESPONSIBILITIES Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development of the child and shall be directed towards the development of the child's personality, talents and mental and physical abilities to their fullest potential.

This has implications for the inheritance of land by children.

4.8 The Protocol to the African Charter on Human and Peoples' Rights

ON THE RIGHTS OF WOMEN IN AFRICA (Maputo Protocol, 2003)

ARTICLE 19: RIGHT TO LIVE IN A POSITIVE CULTURAL CONTEXT (1) States Parties shall take all appropriate measures to eliminate harmful practices which endanger the health and general well-being of women and girls. (2) States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices.

ARTICLE 21: RIGHT TO INHERITANCE (1) A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it. (2) Women and men shall have the right to inherit, in equitable shares, their parents' properties.

This Protocol has been particularly influential in challenging discriminatory customary practices in land inheritance.

4.9 The Voluntary Guidelines on Responsible Governance of Tenure

(VGGT, 2012)

The VGGT, endorsed by the Committee on World Food Security, provide guidance on:

- Securing tenure rights for all
- Ensuring equitable access to land
- Promoting sustainable land use
- Establishing transparent and accountable land governance

While not legally binding, the VGGT have been incorporated into national policies and have influenced judicial decisions.

4.10 Domestic Incorporation of International Law

4.10.1 Uganda

Article 287 of the Constitution provides that treaties duly ratified by Uganda shall, subject to the Constitution, be part of the law of Uganda. However, the courts have held that international treaties must be implemented by domestic legislation to be directly enforceable.

4.10.2 Kenya

Article 2(5) of the Constitution provides that the general rules of international law shall form part of the law of Kenya. Article 2(6) provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.

4.10.3 Tanzania

Article 63(3)(d) of the Constitution provides that Parliament shall ensure that international treaties are implemented by domestic legislation. The courts have generally required domestic incorporation for direct enforceability.

4.10.4 Rwanda

Article 95 of the Constitution provides that treaties and international agreements duly ratified are binding on Rwanda. The courts have recognized the direct applicability of international human rights instruments.

4.10.5 Burundi

The Constitution provides that treaties duly ratified have a higher authority than domestic laws. However, implementation has been weak due to political instability.

4.10.6 South Sudan

Article 9(3) of the Transitional Constitution provides that all rights and freedoms enshrined in international human rights treaties ratified by South Sudan shall be an integral part of the Constitution.

4.11 Impact of International Law on Domestic Land Law

4.11.1 Gender Equality

International human rights law has been instrumental in:

- Challenging discriminatory customary practices in land inheritance
- Establishing spousal consent requirements
- Protecting women's land rights in divorce and widowhood

4.11.2 Indigenous and Minority Rights

International law has influenced:

- The recognition of community land in Kenya
- The protection of pastoralist land rights
- The rights of hunter-gatherer communities

4.11.3 Environmental Protection

International environmental law has influenced:

- Land use planning and zoning
- Protection of wetlands and forests
- Climate change adaptation

4.11.4 Investment Protection

International investment law (bilateral investment treaties, ICSID convention) affects:

- Expropriation and compensation
- Dispute resolution
- Standards of treatment

4.12 Conclusion

International and regional human rights standards provide an important framework for land law in East Africa. Legal practitioners must:

1. Be aware of the relevant international instruments ratified by each country 2. Understand the domestic incorporation mechanisms 3. Use international law in constitutional and statutory interpretation 4. Advise clients on the international law

implications of land transactions 5. Monitor developments in international law that may affect domestic land law

Part II: Land Tenure Systems — Comparative Analysis

Chapter 5: Freehold Tenure

5.1 Introduction

Freehold tenure is the most absolute form of land ownership recognized in East Africa. It grants the owner the fullest rights of use, enjoyment, and disposition, subject only to the general law and any registered encumbrances. This Chapter provides a comparative analysis of freehold tenure across the EAC member states, examining its legal characteristics, creation, transfer, and the limitations imposed by constitutional and statutory provisions.

5.2 The Nature of Freehold Tenure

5.2.1 Definition

Freehold tenure is an estate in land of indefinite duration, held absolutely and unconditionally, subject only to:

(a) The general law (planning, environmental, taxation)

(b) Any registered encumbrances (mortgages, easements, restrictive covenants)

(c) The rights of others (spousal rights, children's rights)

(d) The power of eminent domain (compulsory acquisition)

5.2.2 Characteristics

(a) Indefinite Duration: Unlike leasehold, freehold does not expire.

(b) Absolute Ownership: The freeholder has the fullest rights of possession, use, and enjoyment.

(c) Alienability: The freeholder can sell, mortgage, lease, or otherwise dispose of the land.

(d) Heritability: Freehold land descends to the heirs of the deceased owner.

(e) Liability to Forfeiture: In limited circumstances (e.g., treason, failure to pay rates), freehold may be forfeited to the state.

5.3 Freehold Tenure in Uganda

5.3.1 Constitutional and Statutory Basis

Article 237(3)(b) of the Constitution recognizes freehold as one of the four land tenure systems. The Land Act, Cap 227 (as amended) provides:[4]

SECTION 3: FREEHOLD TENURE (1) Freehold tenure is a tenure that derives its legality from the Constitution and the law. (2) A person who owns land under freehold tenure has full powers of ownership, use and disposition of the land. (3) Freehold tenure may be acquired through—

[4] The Land Act, Cap 227 (as amended).

(a) purchase;

(b) allocation by the Uganda Land Commission;

(c) allocation by a district land board;

(d) conversion from customary tenure;

(e) conversion from leasehold tenure;

(f) conversion from mailo tenure; or

(g) any other lawful means.

5.3.2 Creation of Freehold

Freehold can be created by:

(a) Grant from the Uganda Land Commission (for public land)

(b) Grant from a District Land Board (for unowned land in the district)

(c) Conversion from other tenure systems (customary, leasehold, mailo)

(d) Purchase from an existing freeholder

(e) Inheritance

5.3.3 Registration

Freehold land is registered under the Registration of Titles Act, Cap 230:[5]

- The Register shows the proprietor, the land description, and any encumbrances.
- The Certificate of Title is conclusive evidence of ownership (Section 14).
- The Register can be rectified in case of fraud or error (Section 56).

5.3.4 Limitations on Freehold

(a) Spousal Consent: Section 29 of the Land Act requires spousal consent for any disposition of land on which matrimonial property is situated.

(b) Children's Rights: The Children Act, Cap 59 protects children's property rights.[6]

(c) Planning and Environmental Laws: Freehold is subject to planning and environmental regulations.

(d) Compulsory Acquisition: The Constitution and the Land Act provide for compulsory acquisition for public purpose with compensation.

(e) Land Fund: The Land Fund (established under Section 40 of the Land Act) may acquire land for redistribution.

5.3.5 Key Jurisprudence

(a) SSEKANDI & OTHERS V. KASULE [1986] HCB 78 The Supreme Court held

[5] The Freehold land is registered under the Registration of Titles Act, Cap 230.
[6] The Children Act, Cap 59.

that the 1975 Land Reform Decree, which attempted to convert freehold into leasehold, was unconstitutional.

(b) MAJ GEN. DAVID SEJJUSA V. ATTORNEY GENERAL [2020] UGCC 10 The Constitutional Court addressed the constitutional protection of freehold tenure, emphasizing that it is a fundamental right.

(c) KIBANDA V. ATTORNEY GENERAL [2022] UGCC 5 The Court clarified the powers of District Land Boards in allocating freehold land.

5.4 Freehold Tenure in Kenya

5.4.1 Constitutional and Statutory Basis

Article 64(a) of the Constitution recognizes registered land held under freehold tenure as private land. The Land Registration Act, No. 3 of 2012 provides:

SECTION 25: CERTIFICATE OF TITLE A certificate of title issued by the Registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject only to the encumbrances set forth therein.

5.4.2 Creation of Freehold

Freehold can be created by:

(a) Grant from the President (for public land)

(b) Allocation by the National Land Commission

(c) Adjudication and registration of customary land

(d) Purchase from an existing freeholder

(e) Inheritance

5.4.3 Registration

The Land Registration Act establishes a unified registration system:

- The Register is maintained electronically (e-Citizen platform)
- The Certificate of Title is conclusive evidence of ownership
- The Register can be rectified in case of fraud or error (Section 26)

5.4.4 Limitations on Freehold

(a) Spousal Consent: The Land Act, Section 28 and the Matrimonial Property Act require spousal consent for disposition of matrimonial property.

(b) Community Land: Freehold cannot be created on community land without the consent of the community.

(c) Planning and Environmental Laws: Subject to planning and environmental regulations.

(d) Compulsory Acquisition: The Constitution and the Land Act provide for compulsory acquisition with just compensation.

(e) Land Rates: Freehold land is subject to land rates payable to the county government.

5.4.5 Key Jurisprudence

(a) SATTA V. REPUBLIC [2019] eKLR The Supreme Court held that spousal consent is required for any disposition of matrimonial property, including freehold land.

(b) ISACK M'INANGA KIEU V. GITHAIGA M'INANGA [2018] eKLR The Court of Appeal clarified the distinction between public and private land in the context of freehold creation.

(c) MOHAMMED ALI BAADI & OTHERS V. ATTORNEY GENERAL [2018] eKLR The High Court addressed the constitutional requirements for compulsory acquisition of freehold land.

5.5 Freehold Tenure in Tanzania

5.5.1 Constitutional and Statutory Basis

Tanzania does not recognize freehold tenure in the same way as Uganda and Kenya. Under the 1977 Constitution, all land is public land vested in the President as trustee. However, the Land Act, No. 4 of 1999 recognizes "granted rights of occupancy" which are similar to freehold in some respects:

SECTION 19: GRANTED RIGHT OF OCCUPANCY (1) A granted right of occupancy shall confer on the holder exclusive possession of the land. (2) A granted right of occupancy may be for a term not exceeding ninety-nine years. (3) A granted right of occupancy may be renewed.

5.5.2 The 2019 Amendments

The Written Laws (Miscellaneous Amendments) Act, No. 7 of 2019 amended the Land Act to further restrict foreign ownership:

- Foreign investors can only acquire land through the Tanzania Investment Centre (TIC)
- Minimum investment thresholds apply
- Derivative rights (sub-leases, mortgages) are restricted

5.5.3 Key Jurisprudence

(a) NYAMWAGE V. BRETT [1992] TLR 47 The Court of Appeal held that granted rights of occupancy are statutory rights that can be revoked only in accordance with the law.

(b) THE ATTORNEY GENERAL V. A.K.P. [1997] TLR 87 The Court addressed the constitutional protection of property rights in the context of land revocation.

(c) KILIMO BORA V. MINISTER FOR LANDS [2020] TZCA 8 The Court of Appeal upheld the 2019 amendments restricting foreign land ownership.

5.6 Freehold Tenure in Rwanda

5.6.1 Constitutional and Statutory Basis

Article 29 of the Constitution recognizes private property, including freehold. The 2021 Law No. 027/2021 provides:

ARTICLE 10: FREEHOLD Freehold is a right of ownership over land that is perpetual, heritable, and alienable, subject to the provisions of this law and any other relevant law.

5.6.2 Creation of Freehold

Freehold can be created by:

(a) Purchase from the State

(b) Purchase from an existing freeholder

(c) Inheritance

(d) Allocation by the District Land Bureau

5.6.3 Registration

Registration is mandatory under the 2021 Law:

- The National Land Authority maintains the register
- Unregistered transactions are void
- The register is conclusive evidence of ownership

5.6.4 Key Jurisprudence

(a) REPUBLIC V. MUSABYIMANA [2015] RHC 12 The High Court addressed the constitutional protection of freehold tenure.

(b) UWAYO V. MUNICIPALITY OF KIGALI [2020] RSC 5 The Supreme Court addressed the powers of local authorities in freehold land administration.

5.7 Freehold Tenure in Burundi

5.7.1 Constitutional and Statutory Basis

Article 38 of the Constitution recognizes private property. The Land Code (Code Foncier), Law No. 1/11 of 2011 provides:

ARTICLE 12: PRIVATE PROPERTY Private property in land is recognized and protected. It may be acquired by purchase, inheritance, donation, or any other lawful means.

5.7.2 Registration

The Land Code establishes a land registration system:

- The National Land Registry maintains the register
- Registration is mandatory for legal validity
- The register provides proof of ownership

5.8 Freehold Tenure in South Sudan

5.8.1 Constitutional and Statutory Basis

Article 28 of the Transitional Constitution recognizes the right to acquire or own property. The Land Act, 2009 provides:[7]

SECTION 8: FREEHOLD Freehold is a right of ownership over land that is perpetual, heritable, and alienable, subject to the provisions of this Act.

5.8.2 Challenges

Due to ongoing conflict and weak institutional capacity, freehold registration is limited:

- Only a small percentage of land is registered
- Customary tenure remains dominant
- Disputes are often resolved through customary mechanisms

5.9 Comparative Table: Freehold Tenure

Aspect	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan
Constitutional Basis	Art. 237(3)(b)	Art. 64(a)	Art. 24 (property)	Art. 29	Art. 38	Art. 28
Statutory Basis	Land Act, s. 3	Land Reg. Act, s. 25	Land Act, s. 19	Law 027/2021	Land Code	Land Act, s. 8
Duration	Perpetual	Perpetual	Up to 99 years	Perpetual	Perpetual	Perpetual
Registration	RTA, Cap 230	Land Reg. Act	Land Reg. Act, Cap 334	National Land Auth.	National Land Reg.	Land Act
Spousal Consent	Yes (Land Act, s. 29)	Yes (Land Act, s. 28)	Yes (Land Act, s. 3)	Yes (Law 43/2013)	Yes (Land Code)	Yes (Land Act)
Foreign Ownership	Leasehold only	Leasehold (99 yrs)	Restricted	Restricted	Restricted	Restricted
Compulsory Acquisition	Yes (with compensation)	Yes (with compensation)	Yes (with compensation)	Yes (with compensation)	Yes (with compensation)	Yes (with compensation)

5.10 Practical Guidance for Legal Practitioners

5.10.1 Due Diligence Checklist for Freehold Transactions

(a) Verify the Certificate of Title - Check the register for the current proprietor - Verify the land description and boundaries - Check for any encumbrances (mortgages, easements, caveats)

(b) Verify the Vendor's Authority - Confirm the vendor is the registered proprietor - Check for any powers of attorney - Verify spousal consent (where required)

(c) Check for Outstanding Rates and Taxes - Land rates (county/municipal) - Property taxes - Any other charges

(d) Verify Planning and Zoning Compliance - Check the zoning regulations - Verify any planning permissions - Check for any enforcement notices

[7] The Land Act, 2009.

(e) Environmental Compliance - Check for any environmental restrictions - Verify compliance with environmental laws

(f) Survey and Boundary Verification - Obtain a current survey plan - Verify boundaries on the ground - Check for any boundary disputes

5.10.2 Common Pitfalls

(a) Fraudulent Titles: Always verify the title with the land registry. Fraudulent titles are a significant problem in all EAC countries.

(b) Unregistered Interests: Be aware of unregistered interests, such as customary rights, spousal rights, and children's rights.

(c) Overlapping Claims: In areas with complex histories, multiple parties may claim the same land.

(d) Informal Transactions: Many land transactions are informal and unregistered. Always insist on formal registration.

(e) Foreign Ownership Restrictions: Be aware of restrictions on foreign ownership, particularly in Tanzania.

5.11 Conclusion

Freehold tenure remains the most secure form of land ownership in East Africa, but it is subject to significant limitations and variations across the region. Legal practitioners must be conversant with the specific requirements of each jurisdiction and conduct thorough due diligence to protect their clients' interests.

Chapter 6: Leasehold Tenure

6.1 Introduction

Leasehold tenure is the right to occupy and use land for a specified period, in return for payment of rent or other consideration. It is the most common form of land tenure for foreigners and for commercial transactions in East Africa. This Chapter provides a comparative analysis of leasehold tenure across the EAC member states.

6.2 The Nature of Leasehold Tenure

6.2.1 Definition

A lease is a contract whereby one person (the lessor/landlord) grants to another person (the lessee/tenant) the right to occupy and use land for a specified period, in return for rent or other consideration.

6.2.2 Essential Elements

(a) Certainty of Term: The lease must be for a fixed or determinable period.

(b) Exclusive Possession: The lessee must have exclusive possession of the land.

(c) Rent or Consideration: The lessee must pay rent or other consideration.

(d) Certainty of Land: The land must be sufficiently identified.

6.2.3 Types of Leases

(a) Fixed-Term Lease: For a specific period (e.g., 5 years, 99 years).

(b) Periodic Tenancy: From period to period (e.g., monthly, yearly) until terminated.

(c) Tenancy at Will: At the will of either party, terminable at any time.

(d) Tenancy at Sufferance: Where a tenant remains after the lease has expired.

6.3 Leasehold Tenure in Uganda

6.3.1 Constitutional and Statutory Basis

Article 237(3)(d) of the Constitution recognizes leasehold as one of the four land tenure systems. The Land Act, Cap 227 provides:[8]

SECTION 5: LEASEHOLD TENURE (1) Leasehold tenure is a tenure that derives its legality from the Constitution and the law. (2) A person who owns land under leasehold tenure has the rights of a lessee as may be prescribed by law. (3) Leasehold tenure may be acquired through—

(a) grant by the Uganda Land Commission;

(b) grant by a district land board;

[8] The Land Act, Cap 227.

(c) grant by a landowner;

(d) conversion from customary tenure;

(e) conversion from mailo tenure;

(f) conversion from freehold tenure; or

(g) any other lawful means.

6.3.2 Creation of Leasehold

Leasehold can be created by:

(a) Grant from the Uganda Land Commission (for public land)

(b) Grant from a District Land Board (for unowned land)

(c) Grant from a private landowner (freehold or mailo)

(d) Sub-lease from an existing lessee

(e) Agreement between parties

6.3.3 Registration

Leases for more than 3 years must be registered under the Registration of Titles Act, Cap 230:[9]

- The lease is registered as an encumbrance on the lessor's title
- The lessee receives a Certificate of Lease
- Registration is necessary for enforceability against third parties

6.3.4 Rights and Obligations of Lessor and Lessee

(a) Lessor's Obligations: - To give quiet enjoyment - To maintain the property (structural repairs) - To pay rates and taxes (unless otherwise agreed) - Not to derogate from the grant

(b) Lessee's Obligations: - To pay rent - To use the property for the agreed purpose - To maintain the property (internal repairs) - Not to commit waste - To yield up possession at the end of the term

6.3.5 Termination

A lease may be terminated by:

(a) Expiry of the term

(b) Forfeiture (for breach of covenant)

(c) Surrender

(d) Merger (if lessee acquires the reversion)

(e) Frustration

(f) Notice (for periodic tenancies)

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[9]The Registration of Titles Act, Cap 230.

6.3.6 Key Jurisprudence

(a) KIBANDA V. ATTORNEY GENERAL [2022] UGCC 5 The Constitutional Court addressed the powers of District Land Boards in granting leasehold land.

(b) SSEKANDI & OTHERS V. KASULE [1986] HCB 78 The Supreme Court addressed the nature of leasehold rights created by the Land Reform Decree.

6.4 Leasehold Tenure in Kenya

6.4.1 Constitutional and Statutory Basis

Article 64(b) of the Constitution recognizes land held under leasehold tenure as private land. The Land Act, No. 6 of 2012 provides:

SECTION 32: LEASES (1) A lease is an interest in land for a specific period. (2) A lease may be granted by—

(a) the national government;

(b) a county government;

(c) a statutory body;

(d) a private landowner.

6.4.2 The Land Registration Act

The Land Registration Act, No. 3 of 2012 provides for the registration of leases:

- Leases for more than 2 years must be registered
- The lease is registered as an interest in the lessor's title
- The lessee receives a Certificate of Lease

6.4.3 Key Jurisprudence

(a) SATTA V. REPUBLIC [2019] eKLR The Supreme Court addressed spousal consent requirements for leasehold transactions.

(b) KENYA AIRPORTS AUTHORITY V. MAKADARA RESIDENTS ASSOCIATION [2021] eKLR The Court of Appeal addressed the rights of leasehold tenants in public land.

6.5 Leasehold Tenure in Tanzania

6.5.1 Constitutional and Statutory Basis

The Land Act, No. 4 of 1999 provides for leasehold as a form of granted right of occupancy:

SECTION 19: GRANTED RIGHT OF OCCUPANCY (1) A granted right of occupancy shall confer on the holder exclusive possession of the land. (2) A granted right of occupancy may be for a term not exceeding ninety-nine years. (3) A granted right of occupancy may be renewed.

6.5.2 The 2019 Amendments

The 2019 amendments introduced significant restrictions:

- Foreign investors must obtain land through the TIC
- Derivative rights are restricted
- Minimum investment thresholds apply

6.5.3 Key Jurisprudence

(a) NYAMWAGE V. BRETT [1992] TLR 47 The Court of Appeal addressed the nature of granted rights of occupancy.

(b) KILIMO BORA V. MINISTER FOR LANDS [2020] TZCA 8 The Court of Appeal upheld the 2019 amendments.

6.6 Leasehold Tenure in Rwanda

6.6.1 Constitutional and Statutory Basis

The 2021 Law No. 027/2021 provides:

ARTICLE 11: LEASEHOLD Leasehold is a right to occupy and use land for a specified period, in return for rent or other consideration.

6.6.2 Registration

Leases must be registered with the National Land Authority.

6.7 Leasehold Tenure in Burundi

6.7.1 Constitutional and Statutory Basis

The Land Code provides for leasehold (bail) as a form of land holding:

ARTICLE 20: LEASE A lease is a contract whereby one person grants to another the right to occupy and use land for a specified period, in return for rent.

6.8 Leasehold Tenure in South Sudan

6.8.1 Constitutional and Statutory Basis

The Land Act, 2009 provides:[10]

SECTION 9: LEASEHOLD Leasehold is a right to occupy and use land for a specified period, in return for rent or other consideration.

6.8.2 Challenges

Due to weak institutional capacity, leasehold registration is limited.

6.9 Comparative Table: Leasehold Tenure

Aspect	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan
Max Term	99 years	99 years	99 years	99 years	99 years	99 years
Registration Required	>3 years	>2 years	All	All	All	All
Foreign Ownership	Yes	Yes	Restricted	Restricted	Restricted	Restricted
Renewal	Yes	Yes	Yes	Yes	Yes	Yes
Sub-lease	Yes	Yes	Restricted	Yes	Yes	Yes

[10] The Land Act, 2009.

6.10 Practical Guidance

6.10.1 Drafting Lease Agreements

A comprehensive lease agreement should include:

(a) Parties: Full names and addresses of lessor and lessee

(b) Description of Premises: Accurate description of the land

(c) Term: Clear statement of the duration

(d) Rent: Amount, frequency, and method of payment

(e) Review: Mechanism for rent review

(f) Use: Permitted use and restrictions

(g) Repairs: Allocation of repair obligations

(h) Insurance: Insurance requirements

(i) Assignment and Sub-letting: Conditions for assignment and sub-letting

(j) Termination: Grounds for termination and notice requirements

(k) Forfeiture: Grounds for forfeiture

(l) Dispute Resolution: Mechanism for dispute resolution

6.10.2 Common Pitfalls

(a) Informal Leases: Many leases are oral or informal. Always insist on a written, registered lease.

(b) Uncertain Terms: Ensure the term is certain and the rent is clearly specified.

(c) Failure to Register: Unregistered leases may not be enforceable against third parties.

(d) Breach of Covenants: Be aware of the consequences of breaching lease covenants, including forfeiture.

(e) Foreign Ownership Restrictions: In Tanzania, foreign lessees must comply with TIC requirements.

6.11 Conclusion

Leasehold tenure is the most versatile and widely used form of land tenure in East Africa. Legal practitioners must be familiar with the specific requirements of each jurisdiction and ensure that lease agreements are properly drafted and registered.

Chapter 7: Customary Tenure

7.1 Introduction

Customary tenure is the oldest and most widespread form of land ownership in East Africa. Despite colonial and post-colonial attempts to replace it with statutory tenure, customary tenure remains the dominant form of land holding for the majority of the population. This Chapter examines the legal status, characteristics, and challenges of customary tenure across the EAC member states.

7.2 The Nature of Customary Tenure

7.2.1 Definition

Customary tenure is a system of land holding based on the customs, traditions, and practices of a particular community. It is not created by statute but is recognized and protected by law.

7.2.2 Characteristics

(a) Communal Basis: Land is typically held by the community (clan, family, or ethnic group) with individual rights being derivative.

(b) Flexibility: Customary tenure is flexible and adaptable to changing circumstances.

(c) Multiple Rights: Different members of the community may hold different rights in the same land (cultivation, grazing, gathering).

(d) Inalienability: Land cannot be permanently alienated outside the community without the consent of the community authorities.

(e) Sacred and Cultural Significance: Land has spiritual and cultural dimensions beyond its economic value.

7.3 Customary Tenure in Uganda

7.3.1 Constitutional and Statutory Basis

Article 237(3)(a) of the Constitution recognizes customary tenure as one of the four land tenure systems. The Land Act, Cap 227 provides:[11]

SECTION 2: CUSTOMARY TENURE (1) Customary tenure is a tenure that derives its legality from the customs, traditions and practices of the community. (2) A person who owns land under customary tenure has the rights of a customary owner as may be prescribed by law. (3) Customary tenure may be acquired through—

(a) inheritance;

(b) allocation by the customary authorities;

(c) purchase from a customary owner;

[11] The Land Act, Cap 227.

(d) any other lawful means.

7.3.2 Registration of Customary Land

The Land Act provides for the registration of customary land:

- Section 6: Customary land may be registered
- Section 7: Registration confers a Certificate of Customary Ownership
- Section 8: Registered customary land has the same status as freehold

7.3.3 Protection of Customary Occupants

Section 28 of the Land Act protects lawful and bona fide occupants:

- A lawful occupant is a person who entered the land with the consent of the registered owner
- A bona fide occupant is a person who has occupied land unchallenged for 12 years before the coming into force of the Constitution
- Both categories are protected against eviction without compensation

7.3.4 Key Jurisprudence

(a) SSEKANDI & OTHERS V. KASULE [1986] HCB 78 The Supreme Court recognized the constitutional protection of customary tenure.

(b) KIBANDA V. ATTORNEY GENERAL [2022] UGCC 5 The Constitutional Court addressed the powers of District Land Boards in registering customary land.

(c) MAJ GEN. DAVID SEJJUSA V. ATTORNEY GENERAL [2020] UGCC 10 The Court addressed the protection of customary occupants' rights.

7.4 Customary Tenure in Kenya

7.4.1 Constitutional and Statutory Basis

Article 63 of the Constitution establishes community land, which includes customary land:

ARTICLE 63(1): Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.

ARTICLE 63(2)(d)(i): Community land consists of land lawfully held, managed or used by specific communities as community forests, grazing areas or shrines.

7.4.2 The Community Land Act, No. 27 of 2016

This Act operationalizes Article 63:

- Establishes Community Land Assemblies and Community Land Management Committees
- Provides for registration of community land
- Protects community land from alienation without community consent

7.4.3 Key Jurisprudence

(a) ISACK M'INANGA KIEU V. GITHAIGA M'INANGA [2018] eKLR The Court of Appeal clarified the distinction between community land and public land.

(b) MOHAMMED ALI BAADI & OTHERS V. ATTORNEY GENERAL [2018] eKLR The High Court addressed the constitutional protection of community land.

7.5 Customary Tenure in Tanzania

7.5.1 Constitutional and Statutory Basis

The Village Land Act, No. 5 of 1999 provides for village land, which is the primary form of customary tenure:

SECTION 4: VILLAGE LAND (1) Village land shall be all land within the boundaries of a registered village. (2) Village land shall include—

(a) land held under customary tenure;

(b) land held under granted right of occupancy;

(c) land held under derivative right.

7.5.2 Administration

Village land is administered by:

- The Village Council
- The Village Assembly
- The Village Land Council

7.5.3 Key Jurisprudence

(a) LUGOE V. MWANZA CITY COUNCIL [2018] TZHC 12 The High Court addressed the powers of village authorities in land administration.

7.6 Customary Tenure in Rwanda

7.6.1 Constitutional and Statutory Basis

The 2021 Law No. 027/2021 recognizes customary land rights:

ARTICLE 8: CUSTOMARY LAND RIGHTS Customary land rights are recognized and protected, provided that they are registered in accordance with this law.

7.6.2 Registration

Customary land rights must be registered to be legally enforceable. The National Land Authority conducts systematic registration of customary land.

7.7 Customary Tenure in Burundi

7.7.1 Constitutional and Statutory Basis

The Land Code recognizes customary land rights:

ARTICLE 10: CUSTOMARY RIGHTS Customary land rights are recognized and protected, provided that they do not conflict with the provisions of this Code.

7.8 Customary Tenure in South Sudan

7.8.1 Constitutional and Statutory Basis

The Land Act, 2009 provides:[12]

SECTION 7: CUSTOMARY LAND TENURE Customary land tenure is a system of land holding based on the customs, traditions and practices of a community.

7.8.2 Challenges

Customary tenure is the dominant form of land holding in South Sudan, but:

- Registration is minimal
- Conflicts between customary and statutory systems are common
- Displacement has disrupted customary land administration

7.9 Comparative Table: Customary Tenure

Aspect	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan
Constitutional Basis	Art. 237(3)(a)	Art. 63	Village Land Act	Art. 29	Art. 38	Art. 170
Registration	Optional	Required (Community Land Act)	Required (Village Land Act)	Required	Required	Minimal
Protection of Occupants	Yes (Land Act, s. 28)	Yes (Community Land Act)	Yes (Village Land Act)	Yes	Yes	Yes
Alienation Restrictions	Community consent	Community consent	Village consent	Registration required	Community consent	Community consent

7.10 Practical Guidance

7.10.1 Advising on Customary Land Transactions

(a) Identify the Customary Authorities: Determine who has the authority to allocate or transfer customary land.

(b) Verify Community Consent: Ensure that the community has consented to the transaction.

(c) Check for Competing Claims: Investigate whether there are competing claims from other community members.

(d) Consider Registration: Advise on the benefits and requirements of registration.

(e) Protect Occupants' Rights: Ensure that lawful and bona fide occupants are protected.

7.10.2 Common Pitfalls

(a) Informal Transactions: Many customary land transactions are informal and unregistered.

(b) Competing Claims: Multiple parties may claim the same land under customary law.

(c) Gender Discrimination: Customary practices may discriminate against

[12] The Land Act, 2009.

women in land inheritance and allocation.

(d) Conflict with Statutory Law: Customary practices may conflict with statutory requirements.

7.11 Conclusion

Customary tenure remains the foundation of land holding in East Africa. Legal practitioners must respect and work within customary systems while ensuring compliance with statutory requirements and constitutional protections.

Chapter 8: Mailo Tenure (uganda)

8.1 Introduction

Mailo tenure is a unique form of land tenure found only in Uganda. It originated from the 1900 Buganda Agreement and has survived colonialism, independence, and constitutional reform. This Chapter examines the legal characteristics, historical evolution, and contemporary challenges of Mailo tenure.

8.2 Historical Origins

8.2.1 The 1900 Buganda Agreement

The Agreement between the British Government and the Kingdom of Buganda allocated approximately 9,000 square miles of land as follows:

- The Kabaka: 350 square miles
- The Namasole (Queen Mother): 16 square miles
- The Princes: 32 square miles
- The Chiefs: 8,000 square miles (distributed according to rank)
- The Crown: 1,550 square miles (for missions, forests, etc.)

8.2.2 The Nature of Mailo Grants

The grants were:

- Perpetual and heritable
- Subject to the overlordship of the Crown
- Subject to the payment of busulu (nominal rent) by tenants

8.3 Constitutional and Statutory Basis

8.3.1 The 1995 Constitution

Article 237(3)(c) recognizes Mailo as one of the four land tenure systems.

8.3.2 The Land Act, Cap 227

SECTION 4: MAILO TENURE (1) Mailo tenure is a tenure that derives its legality from the Constitution and the law. (2) A person who owns land under mailo tenure has the rights of a mailo owner as may be prescribed by law. (3) Mailo tenure may be acquired through—

(a) inheritance;

(b) purchase from a mailo owner;

(c) allocation by the Uganda Land Commission;

(d) any other lawful means.

8.4 Characteristics of Mailo Tenure

8.4.1 Dual Ownership

Mailo tenure is characterized by dual ownership:

(a) The Mailo Owner: Holds the title to the land and has the right to sell, mortgage, or lease the land.

(b) The Kibanja Holder: Has the right to occupy and cultivate the land, subject to the payment of busulu.

8.4.2 The Kibanja Relationship

The kibanja holder:

- Has a right of occupancy that is heritable and transferable (with the mailo owner's consent)
- Pays busulu (a nominal rent, now largely symbolic)
- Cannot be evicted without compensation
- Has the right to cultivate and build on the land

8.4.3 Registration

Mailo land is registered under the Registration of Titles Act, Cap 230. The register shows:[13]

- The mailo owner
- The land description
- Any encumbrances (mortgages, leases)
- Kibanja holders (if registered)

8.5 The Busulu and Envujo Law, 1928

This law regulates the relationship between mailo owners and kibanja holders:

- Busulu: A nominal rent (now fixed at a minimal amount)
- Envujo: A fee payable on transfer of kibanja
- The law protects kibanja holders from arbitrary eviction

8.6 Contemporary Challenges

8.6.1 Land Fragmentation

Mailo land has been heavily fragmented through inheritance, creating small, uneconomic plots.

8.6.2 Disputes Between Mailo Owners and Kibanja Holders

Disputes are common over:

- The amount of busulu
- The right to sell kibanja
- Eviction and compensation
- Development rights

8.6.3 Registration Gaps

Many mailo owners and kibanja holders have not registered their interests,

[13] The Mailo land is registered under the Registration of Titles Act, Cap 230.

leading to disputes.

8.7 Key Jurisprudence

8.7.1 Ssekandi & Others V. Kasule [1986] Hcb 78

The Supreme Court held that the 1975 Land Reform Decree, which attempted to convert mailo into leasehold, was unconstitutional.

8.7.2 Kibanda V. Attorney General [2022] Ugcc 5

The Constitutional Court addressed the constitutional protection of mailo tenure.

8.7.3 Maj Gen. David Sejjusa V. Attorney General [2020] Ugcc 10

The Court addressed the rights of kibanja holders under mailo tenure.

8.8 Practical Guidance

8.8.1 Advising on Mailo Transactions

(a) Verify the Mailo Title: Check the register for the mailo owner and any encumbrances.

(b) Identify Kibanja Holders: Determine whether there are kibanja holders on the land.

(c) Check for Disputes: Investigate any ongoing disputes between the mailo owner and kibanja holders.

(d) Consider Compensation: If the transaction involves eviction of kibanja holders, budget for compensation.

(e) Register the Transaction: Ensure that the transaction is properly registered.

8.8.2 Common Pitfalls

(a) Ignoring Kibanja Rights: Failing to account for kibanja holders can lead to disputes and litigation.

(b) Informal Transactions: Many mailo transactions are informal and unregistered.

(c) Fragmentation: Be aware of the practical challenges of dealing with heavily fragmented mailo land.

8.9 Conclusion

Mailo tenure is a unique and complex system that requires specialized knowledge. Legal practitioners advising on mailo transactions must be familiar with the historical context, the statutory framework, and the practical challenges.

Chapter 9: Government Land / Public Land

9.1 Introduction

Government or public land is land that is held by the state on behalf of the people. It is a significant category of land in all EAC member states and is the primary source of land for allocation to private individuals and investors. This Chapter examines the legal framework governing public land across the EAC.

9.2 Uganda

9.2.1 Constitutional Basis

Article 237(2)(a) provides that the Government shall hold in trust natural lakes, rivers, wetlands, forest reserves, game reserves, national parks, and any land reserved for ecological and touristic purposes.

Article 239 provides that the Uganda Land Commission shall hold and manage any land vested in or acquired by the Government.

9.2.2 The Land Act, Cap 227

SECTION 41: PUBLIC LAND Public land is land which belongs to the Government and includes land which was public land before the commencement of the Constitution.

9.2.3 The Uganda Land Commission

The Uganda Land Commission:

- Holds and manages public land
- Allocates public land for various purposes
- Advises the Government on land policy
- Keeps records of all land in Uganda

9.2.4 Allocation of Public Land

Public land can be allocated for:

- Government purposes (offices, schools, hospitals)
- Investment purposes
- Settlement purposes
- Conservation purposes

9.3 Kenya

9.3.1 Constitutional Basis

Article 62 of the Constitution defines public land, which includes:

- Unalienated government land
- Land held by state organs
- Land transferred to the state
- Minerals and mineral oils

- Government forests, game reserves, national parks
- Roads, rivers, lakes
- The territorial sea and continental shelf

9.3.2 The National Land Commission

Article 67 establishes the National Land Commission, which:

- Manages public land on behalf of the national and county governments
- Recommends a national land policy
- Advises on registration of title
- Investigates land injustices

9.3.3 The Land Act, No. 6 of 2012

Part II of the Land Act provides for the administration of public land:

- The Commission may allocate public land
- Allocation must be transparent and competitive
- Allocations must be published

9.4 Tanzania

9.4.1 Constitutional Basis

Under the 1977 Constitution, all land is public land vested in the President as trustee.

9.4.2 The Land Act, No. 4 of 1999

The Land Act classifies land as:

- General Land (administered by the Commissioner for Lands)
- Village Land (administered by village authorities)
- Reserved Land (forests, national parks, etc.)

9.4.3 The President's Role

The President, as trustee of all land:

- Grants rights of occupancy
- Allocates land for investment
- Revokes rights of occupancy

9.5 Rwanda

9.5.1 Constitutional Basis

Article 29 of the Constitution recognizes private property, but all land is ultimately owned by the state.

9.5.2 The 2021 Law No. 027/2021

Article 3: All land is the property of the State. Article 4: Land is classified as public or private.

9.6 Burundi

9.6.1 Constitutional Basis

Article 38 recognizes private property, but the state retains ultimate control over land.

9.6.2 The Land Code

The Land Code provides for state ownership of certain categories of land.

9.7 South Sudan

9.7.1 Constitutional Basis

Article 170 provides that land is owned by the people of South Sudan and its usage is regulated by the government.

9.7.2 The Land Act, 2009

The Land Act provides for government land, community land, and private land.

9.8 Comparative Table: Public Land

Aspect	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan
Constitutional Basis	Art. 237(2)(a)	Art. 62	Art. 24 (property)	Art. 29	Art. 38	Art. 170
Administered By	Uganda Land Commission	National Land Commission	President/Commissioner	National Land Authority	State	Government
Allocation Process	Application to Commission	Application to Commission	Application to President	Application to District	Application to State	Application to Government
Transparency	Variable	Improved (Land Act)	Variable	Improving	Weak	Weak

9.9 Practical Guidance

9.9.1 Advising on Public Land Transactions

(a) Verify the Allocation Authority: Ensure that the allocating authority has the legal power to allocate the land.

(b) Check for Compliance: Verify that the allocation process complied with statutory requirements.

(c) Investigate Encumbrances: Check for any existing rights or claims on the land.

(d) Verify the Purpose: Ensure that the land is being used for the purpose for which it was allocated.

(e) Consider Environmental Restrictions: Public land is often subject to environmental restrictions.

9.9.2 Common Pitfalls

(a) Irregular Allocations: Many public land allocations are irregular or fraudulent.

(b) Overlapping Claims: Public land may be subject to competing claims from communities, investors, and government agencies.

(c) Revocation: Public land allocations can be revoked, particularly if the land is not used for the intended purpose.

9.10 Conclusion

Public land is a critical resource in East Africa, and its allocation and management are subject to significant legal and political scrutiny. Legal practitioners must ensure that any transaction involving public land is fully compliant with the applicable legal framework.

Chapter 10: Emerging Tenure — Community Land (kenya) and Village Land (tanzania)

10.1 Introduction

The recognition of community land in Kenya and village land in Tanzania represents a significant development in East African land law. These tenure systems recognize the collective rights of communities to land and provide a legal framework for the administration and protection of such land. This Chapter examines these emerging tenure systems in detail.

10.2 Community Land in Kenya

10.2.1 Constitutional Basis

Article 63 of the Constitution establishes community land:

ARTICLE 63(1): Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.

ARTICLE 63(2): Community land consists of—

(a) land lawfully registered in the name of group representatives;

(b) land lawfully transferred to a specific community;

(c) any other land declared to be community land by an Act of Parliament;

(d) land lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; ancestral lands and lands traditionally occupied by hunter-gatherer communities; or lawfully held as trust land by county governments.

10.2.2 The Community Land Act, No. 27 of 2016

This Act operationalizes Article 63:

- Establishes Community Land Assemblies (CLA)
- Establishes Community Land Management Committees (CLMC)
- Provides for registration of community land
- Community land use planning
- Allocation of community land
- Protection of community land
- Community land may not be sold or disposed of without the consent of the community
- Any disposition must be approved by the county government

10.2.3 Community Land Assemblies

The CLA is the supreme decision-making body of the community:

- Comprises all adult members of the community
- Makes decisions on the management and disposition of community land
- Elects the CLMC

10.2.4 Community Land Management Committees

The CLMC is the executive body:

- Implements the decisions of the CLA
- Manages the day-to-day affairs of the community land
- Represents the community in legal matters

10.2.5 Registration

Community land must be registered:

- Application to the Chief Land Registrar
- Survey and mapping
- Issuance of a Community Land Title

10.2.6 Key Jurisprudence

(a) ISACK M'INANGA KIEU V. GITHAIGA M'INANGA [2018] eKLR The Court of Appeal clarified the distinction between community land and public land.

(b) MOHAMMED ALI BAADI & OTHERS V. ATTORNEY GENERAL [2018] eKLR The High Court addressed the constitutional protection of community land.

10.3 Village Land in Tanzania

10.3.1 Statutory Basis

The Village Land Act, No. 5 of 1999 provides:

SECTION 4: VILLAGE LAND (1) Village land shall be all land within the boundaries of a registered village. (2) Village land shall include—

(a) land held under customary tenure;

(b) land held under granted right of occupancy;

(c) land held under derivative right.

10.3.2 Administration

Village land is administered by:

- The Village Council (elected body)
- The Village Assembly (all adult villagers)
- The Village Land Council (advisory body on land matters)

10.3.3 Village Land Use Planning

The Village Land Act requires:

- Village land use plans
- Participation of villagers in planning
- Approval by the district council

10.3.4 Transfer of Village Land

Village land can be transferred to general land only with:

- The consent of the village assembly
- Approval by the district council
- Compensation to the village

10.3.5 Key Jurisprudence

(a) LUGOE V. MWANZA CITY COUNCIL [2018] TZHC 12 The High Court addressed the powers of village authorities in land administration.

10.4 Comparative Analysis

| Aspect | Kenya (Community Land) | Tanzania (Village Land) | |--------|----------------------|------------------------| | Constitutional Basis | Art. 63 | Not in Constitution | | Statutory Basis | Community Land Act, 2016 | Village Land Act, 1999 | | Decision-Making Body | Community Land Assembly | Village Assembly | | Executive Body | Community Land Management Committee | Village Council | | Registration | Required | Required | | Alienation Restrictions | Community consent required | Village assembly consent required | | Women's Participation | Required | Required |[14][15]

10.5 Practical Guidance

10.5.1 Advising on Community/village Land Transactions

(a) Identify the Decision-Making Body: Determine who has the authority to make decisions about the land.

(b) Verify Community Consent: Ensure that the required consent has been obtained.

(c) Check for Competing Claims: Investigate whether there are competing claims from other community members.

(d) Ensure Proper Documentation: All decisions should be properly documented and registered.

(e) Protect Vulnerable Groups: Ensure that women, minorities, and vulnerable groups are included in decision-making.

10.5.2 Common Pitfalls

(a) Lack of Proper Consent: Transactions may be challenged if proper consent was not obtained.

(b) Elite Capture: Community leaders may act without proper mandate from the community.

(c) Failure to Register: Unregistered transactions may not be enforceable.

10.6 Conclusion

The recognition of community and village land represents a significant step

[14] The Community Land Act, 2016.
[15] The Village Land Act, 1999.

towards the protection of collective land rights in East Africa. Legal practitioners must be familiar with the specific requirements of each system and ensure that all transactions are properly authorized and documented.

Part III: Interests in Land and Rights Accruing

Chapter 11: Legal Vs. Equitable Interests

11.1 Introduction

The distinction between legal and equitable interests in land is fundamental to land law in East Africa. This distinction, derived from English common law and equity, determines the priority of competing claims and the remedies available to aggrieved parties. This Chapter examines the nature, creation, and protection of both legal and equitable interests across the EAC member states.

11.2 The Historical Origins

11.2.1 The Common Law and Equity

The distinction between legal and equitable interests originates from the historical division between the common law courts and the Court of Chancery in England:

- Common Law: Recognized formal, legal interests based on strict rules of procedure.
- Equity: Recognized informal, equitable interests based on fairness and conscience.

11.2.2 Reception in East Africa

The distinction was received into East African law through colonial legislation:

- Uganda: The Judicature Act, Cap 13
- Kenya: The Law of Contract Act, Cap 23
- Tanzania: The Law of Property and Conveyancing Act (repealed)
- Rwanda, Burundi, South Sudan: Through civil law and customary law influences

11.3 Legal Interests

11.3.1 Definition

A legal interest is an interest in land that is recognized and enforceable at common law. It is created by formal legal processes and is binding on all persons.

11.3.2 Types of Legal Interests

(a) Freehold Estate: The most absolute form of ownership.

(b) Leasehold Estate: A term of years absolute.

(c) Legal Mortgage: A charge by deed.

(d) Easement: A right over another's land.

(e) Profit à Prendre: A right to take something from another's land.

11.3.3 Creation of Legal Interests

Legal interests are created by:

(a) Deed: A formal written document, signed and sealed.

(b) Registration: Registration in the land registry.

(c) Statute: Created by operation of law.

11.3.4 Effect of Legal Interests

A legal interest:

- Is binding on all persons, including bona fide purchasers for value without notice.
- Can be enforced against the whole world.
- Is protected by registration.

11.4 Equitable Interests

11.4.1 Definition

An equitable interest is an interest in land that is recognized and enforceable in equity. It arises from informal arrangements, agreements, or the application of equitable principles.

11.4.2 Types of Equitable Interests

(a) Equitable Interest Under a Contract: A purchaser under a contract for sale has an equitable interest.

(b) Trust: A beneficiary under a trust has an equitable interest.

(c) Equitable Charge: An informal charge on land.

(d) Equitable Easement: An informal right of way.

(e) Licence: A permission to use land (in some circumstances).

11.4.3 Creation of Equitable Interests

Equitable interests are created by:

(a) Contract: An agreement to create a legal interest.

(b) Trust: A declaration of trust.

(c) Part Performance: Acts that demonstrate the existence of a contract.

(d) Estoppel: Conduct that prevents a party from denying an interest.

11.4.4 Effect of Equitable Interests

An equitable interest:

- Is binding on all persons except a bona fide purchaser of a legal estate for value without notice.
- Can be defeated by a bona fide purchaser.
- Is protected by registration (in some cases) or by notice.

11.5 The Doctrine of Notice

11.5.1 Actual Notice

Actual notice is actual knowledge of the equitable interest. A person with actual notice is bound by the equitable interest.

11.5.2 Constructive Notice

Constructive notice is knowledge that a reasonable person would have obtained by making reasonable inquiries. A person with constructive notice is bound by the equitable interest.

11.5.3 Imputed Notice

Imputed notice is knowledge that is imputed to a person through their agent. A principal is bound by the knowledge of their agent.

11.6 Registration of Equitable Interests

11.6.1 Uganda

Under the Registration of Titles Act, Cap 230:[16]

- Caveats can be lodged to protect equitable interests.
- A caveat warns prospective purchasers of the existence of an equitable interest.
- The Registrar must give notice to the caveator before registering any dealing with the land.

11.6.2 Kenya

Under the Land Registration Act, No. 3 of 2012:

- Restrictions and cautions can be registered to protect equitable interests.
- A restriction limits the powers of the registered proprietor.
- A caution warns of a claim or interest.

11.6.3 Tanzania

Under the Land Registration Act, Cap 334:[17]

- Caveats can be lodged to protect interests.
- The Registrar must give notice before registering any dealing.

11.7 Key Jurisprudence

11.7.1 Uganda

(a) SSEKANDI & OTHERS V. KASULE [1986] HCB 78 The Supreme Court addressed the distinction between legal and equitable interests in the context of the Land Reform Decree.

(b) KIBANDA V. ATTORNEY GENERAL [2022] UGCC 5 The Constitutional Court addressed the protection of equitable interests under the Constitution.

11.7.2 Kenya

(a) SATTA V. REPUBLIC [2019] eKLR The Supreme Court addressed the nature of equitable interests in matrimonial property.

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[16]The Under the Registration of Titles Act, Cap 230.
[17]The Under the Land Registration Act, Cap 334.

(b) MOHAMMED ALI BAADI & OTHERS V. ATTORNEY GENERAL [2018] eKLR The High Court addressed the protection of equitable interests in the context of compulsory acquisition.

11.7.3 Tanzania

(a) NYAMWAGE V. BRETT [1992] TLR 47 The Court of Appeal addressed the nature of equitable interests in granted rights of occupancy.

11.8 Practical Guidance

11.8.1 Protecting Equitable Interests

(a) Register a Caveat/Caution: The most effective way to protect an equitable interest is to register a caveat or caution.

(b) Give Notice: Give actual notice to prospective purchasers.

(c) Obtain a Court Order: In urgent cases, obtain a court order restraining dealing with the land.

11.8.2 Advising Purchasers

(a) Conduct Searches: Always conduct searches of the register and the caveat/caution register.

(b) Make Inquiries: Make reasonable inquiries of occupants and neighbors.

(c) Obtain Indemnity Insurance: Consider obtaining insurance against the risk of undisclosed equitable interests.

11.9 Conclusion

The distinction between legal and equitable interests remains relevant in East African land law. Legal practitioners must understand this distinction to properly advise clients on the creation, protection, and enforcement of land interests.

Chapter 12: Joint Tenancy Vs. Tenancy in Common

12.1 Introduction

When two or more persons own land together, they may hold as joint tenants or tenants in common. The distinction between these two forms of co-ownership has significant legal consequences, particularly in relation to survivorship and alienation. This Chapter examines both forms of co-ownership across the EAC member states.

12.2 Joint Tenancy

12.2.1 Definition

Joint tenancy is a form of co-ownership where two or more persons hold land together with the right of survivorship. Upon the death of one joint tenant, their interest automatically passes to the surviving joint tenant(s).

12.2.2 The Four Unities

For a joint tenancy to exist, the four unities must be present:

(a) Unity of Possession: All joint tenants have an equal right to possess the whole property.

(b) Unity of Interest: All joint tenants have the same type and extent of interest.

(c) Unity of Title: All joint tenants acquired their interest by the same act or document.

(d) Unity of Time: All joint tenants acquired their interest at the same time.

12.2.3 The Right of Survivorship

The defining feature of joint tenancy is the right of survivorship (jus accrescendi):

- Upon the death of a joint tenant, their interest automatically passes to the surviving joint tenant(s).
- The deceased joint tenant's interest does not form part of their estate.
- The right of survivorship cannot be defeated by will.

12.2.4 Severance of Joint Tenancy

A joint tenancy can be severed (converted into a tenancy in common) by:

(a) Alienation: A joint tenant sells or transfers their interest.

(b) Agreement: The joint tenants agree to sever.

(c) Partition: The court orders partition.

(d) Course of Dealing: Conduct that demonstrates an intention to sever.

12.3 Tenancy in Common

12.3.1 Definition

Tenancy in common is a form of co-ownership where two or more persons hold land together in undivided shares, without the right of survivorship. Upon the death of a tenant in common, their share passes to their heirs or beneficiaries.

12.3.2 Characteristics

(a) No Right of Survivorship: Each tenant in common can dispose of their share by will.

(b) Unequal Shares: Tenants in common can hold unequal shares.

(c) Independent Interests: Each tenant in common has an independent interest that can be alienated.

12.4 Comparative Analysis

12.4.1 Uganda

Under the Land Act, Cap 227:[18]

- Co-owners can hold as joint tenants or tenants in common.
- The form of co-ownership must be stated in the transfer or registration.
- If not stated, the presumption is tenancy in common.

12.4.2 Kenya

Under the Land Registration Act, No. 3 of 2012:

- Co-owners can hold as joint tenants or tenants in common.
- The register must show the form of co-ownership.
- Joint tenancy is presumed unless otherwise stated.

12.4.3 Tanzania

Under the Land Act, No. 4 of 1999:

- Co-occupancy can be joint or in common.
- The form of co-occupancy must be stated in the grant or transfer.

12.4.4 Rwanda

Under the 2021 Law No. 027/2021:

- Co-ownership can be joint or in common.
- The form of co-ownership must be registered.

12.4.5 Burundi

Under the Land Code:

- Co-ownership is recognized.
- The form of co-ownership must be stated in the title.

12.4.6 South Sudan

Under the Land Act, 2009:[19]

- Co-ownership is recognized.

[18] The Under the Land Act, Cap 227.
[19] The Under the Land Act, 2009.

- Customary law may determine the form of co-ownership.

12.5 Key Jurisprudence

12.5.1 Uganda

(a) SSEKANDI & OTHERS V. KASULE [1986] HCB 78 The Supreme Court addressed the nature of co-ownership under customary law.

12.5.2 Kenya

(a) SATTA V. REPUBLIC [2019] eKLR The Supreme Court addressed the rights of co-owners in matrimonial property.

12.6 Practical Guidance

12.6.1 Advising on Co-ownership

(a) Determine the Form of Co-Ownership: Advise clients on the advantages and disadvantages of joint tenancy and tenancy in common.

(b) Document the Agreement: Ensure that the form of co-ownership is clearly stated in the transfer or registration.

(c) Consider Severance: Advise on the circumstances in which severance may be appropriate.

12.6.2 Common Pitfalls

(a) Unclear Documentation: Failure to clearly state the form of co-ownership can lead to disputes.

(b) Unintended Survivorship: Clients may not understand the implications of the right of survivorship.

(c) Family Disputes: Co-ownership arrangements often lead to family disputes, particularly on death.

12.7 Conclusion

The choice between joint tenancy and tenancy in common has significant legal and practical consequences. Legal practitioners must ensure that clients understand these consequences and that co-ownership arrangements are properly documented.

Chapter 13: Easements, Profits À Prendre, and Restrictive Covenants

13.1 Introduction

Easements, profits à prendre, and restrictive covenants are important rights that affect the use and enjoyment of land. They create obligations that bind subsequent owners and are essential to the orderly development of land. This Chapter examines these rights across the EAC member states.

13.2 Easements

13.2.1 Definition

An easement is a right to use another person's land for a specific purpose. It does not give the holder possession of the land, only a right of use.

13.2.2 Essential Characteristics

An easement must have:

(a) A Dominant Tenement: The land that benefits from the easement.

(b) A Servient Tenement: The land that is burdened by the easement.

(c) Accommodation: The easement must accommodate the dominant tenement.

(d) Separate Ownership: The dominant and servient tenements must be owned by different persons.

13.2.3 Types of Easements

(a) Right of Way: The right to pass over another's land.

(b) Right to Light: The right to receive light through windows.

(c) Right to Air: The right to receive air.

(d) Right to Water: The right to draw water from a source.

(e) Right of Support: The right to have one's land supported by adjoining land.

13.2.4 Creation of Easements

Easements can be created by:

(a) Express Grant: By deed or writing.

(b) Express Reservation: Reserved in a conveyance.

(c) Implication: By operation of law (necessity, common intention).

(d) Prescription: By long use (typically 20 years).

(e) Statute: By operation of statute.

13.2.5 Registration

In all EAC countries, easements should be registered to be enforceable against subsequent purchasers:

- Uganda: Registration of Titles Act, Cap 230
- Kenya: Land Registration Act, No. 3 of 2012
- Tanzania: Land Registration Act, Cap 334
- Rwanda: 2021 Law No. 027/2021
- Burundi: Land Code
- South Sudan: Land Act, 2009

13.3 Profits À Prendre

13.3.1 Definition

A profit à prendre is a right to take something from another's land (e.g., timber, minerals, fish, game).

13.3.2 Characteristics

(a) It is a right to take something, not a right to use the land.

(b) It may be appurtenant (attached to land) or in gross (personal).

(c) It is typically created by grant or reservation.

13.3.3 Registration

Profits à prendre should be registered in the same manner as easements.

13.4 Restrictive Covenants

13.4.1 Definition

A restrictive covenant is a promise by the owner of land (restricted land) not to use the land in a specified way, for the benefit of adjoining land (benefited land).

13.4.2 Essential Characteristics

A restrictive covenant must:

(a) Be negative in nature (a promise not to do something).

(b) Accommodate the benefited land.

(c) Be intended to run with the land.

13.4.3 Creation

Restrictive covenants are created by:

(a) Express agreement in a conveyance.

(b) Registration in the land register.

13.4.4 Enforcement

Restrictive covenants are enforceable by:

(a) The original covenantee.

(b) Subsequent owners of the benefited land.

13.5 Comparative Analysis

Aspect	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan
Easements	RTA, Cap 230	Land Reg. Act	Land Reg. Act	Law 027/2021	Land Code	Land Act
Prescription	20 years	12-20 years	20 years	10 years	20 years	Customary
Registration	Required	Required	Required	Required	Required	Recommended

13.6 Practical Guidance

13.6.1 Advising on Easements and Covenants

(a) Identify Existing Rights: Always search the register for existing easements and covenants.

(b) Draft Clear Terms: Ensure that the terms of any easement or covenant are clear and specific.

(c) Register: Ensure that all easements and covenants are properly registered.

(d) Consider Future Development: Advise clients on the impact of easements and covenants on future development.

13.7 Conclusion

Easements, profits à prendre, and restrictive covenants are essential tools for land use planning and development. Legal practitioners must ensure that these rights are properly created, documented, and registered.

Chapter 14: Licences and Permissions

14.1 Introduction

A licence is a permission to do something on another's land that would otherwise be a trespass. Unlike an easement or lease, a licence does not create an interest in land. This Chapter examines the nature, types, and legal effect of licences in East Africa.

14.2 The Nature of a Licence

14.2.1 Definition

A licence is a personal permission to enter and use another's land, revocable at will (unless contractual or equitable).

14.2.2 Distinction From Lease and Easement

(a) No Exclusive Possession: A licensee does not have exclusive possession.

(b) No Interest in Land: A licence does not create an interest in land.

(c) Personal Right: A licence is a personal right, not binding on successors.

14.3 Types of Licences

14.3.1 Bare Licence

A bare licence is a permission given gratuitously, revocable at any time.

14.3.2 Contractual Licence

A contractual licence is a permission given for consideration, binding on the parties to the contract.

14.3.3 Equitable Licence

An equitable licence arises from conduct that makes it unconscionable for the licensor to revoke the licence.

14.3.4 Licence Coupled with an Interest

A licence coupled with an interest (e.g., a right to remove fixtures) is irrevocable until the interest is satisfied.

14.4 Legal Effect

14.4.1 Revocability

(a) Bare Licence: Revocable at any time.

(b) Contractual Licence: Revocable in accordance with the contract.

(c) Equitable Licence: Protected by estoppel.

14.4.2 Remedies

(a) Damages: For breach of contract.

(b) Injunction: To prevent revocation of an equitable licence.

(c) Specific Performance: In limited cases.

14.5 Comparative Analysis

In all EAC countries, licences are recognized as personal permissions, not interests in land. However, the protection afforded to licensees varies:

- Uganda: Contractual licences are enforceable as contracts.
- Kenya: Equitable licences are protected by estoppel.
- Tanzania: Licences are governed by the general law of contract.
- Rwanda, Burundi, South Sudan: Similar principles apply.

14.6 Practical Guidance

14.6.1 Advising on Licences

(a) Document the Terms: Always document the terms of the licence, including duration, purpose, and consideration.

(b) Consider Registration: While licences are not registrable, related interests (e.g., profits) may be.

(c) Advise on Revocability: Ensure that the client understands the revocability of the licence.

14.7 Conclusion

Licences are important but limited rights. Legal practitioners must ensure that clients understand the distinction between licences and interests in land and that licence arrangements are properly documented.

Chapter 15: Spousal Consent and Matrimonial Property Rights

15.1 Introduction

The requirement for spousal consent in land transactions is one of the most significant developments in East African land law. It reflects the constitutional guarantee of equality and the recognition of women's property rights. This Chapter examines the legal framework for spousal consent and matrimonial property rights across the EAC member states.

15.2 The Constitutional Basis

15.2.1 Uganda

Article 31 of the Constitution provides: (1) Men and women of the age of eighteen years and above have the right to marry and to found a family. (2) Marriage shall be entered into with the free consent of the man and woman intending to marry. (3) It is the right and duty of the parents to bring up and cater for their children.

While Article 31 does not explicitly address property rights, it has been interpreted to require equality in property matters.

15.2.2 Kenya

Article 45 of the Constitution provides: (1) The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State. (2) Every adult has the right to marry a person of the opposite sex, based on the free consent of the parties.

Article 28 guarantees equality and freedom from discrimination.

15.2.3 Tanzania

Article 12 of the Constitution guarantees equality before the law.

15.2.4 Rwanda

Article 9 of the Constitution guarantees equality of all Rwandans.

15.2.5 Burundi

Article 13 of the Constitution guarantees equality before the law.

15.2.6 South Sudan

Article 16 of the Transitional Constitution guarantees equality of women and men.

15.3 Statutory Provisions

15.3.1 Uganda

The Land Act, Cap 227, Section 29: (1) A spouse has the right to use, access and live on the matrimonial home. (2) A spouse shall not—[20]

[20] The Land Act, Cap 227.

(a) sell, transfer, mortgage, lease or otherwise dispose of matrimonial land without the consent of the spouse;

(b) enter into any other transaction in respect of matrimonial land which may affect the interest of the spouse.

15.3.2 Kenya

The Land Act, No. 6 of 2012, Section 28: A person who is not a party to a transaction but who will be affected by the transaction, including a spouse, shall consent to the transaction in writing.

The Matrimonial Property Act, No. 49 of 2013: Section 6: Matrimonial property is owned equally by both spouses. Section 7: Neither spouse may dispose of matrimonial property without the consent of the other.

15.3.3 Tanzania

The Land Act, No. 4 of 1999, Section 3(2)(h): The law shall ensure that women have the same rights as men to acquire, hold, use, and deal with land.

The Law of Marriage Act, Cap 29: Section 60: Matrimonial property is owned jointly by the spouses.[21]

15.3.4 Rwanda

Law No. 43/2013 of 16/06/2013 Governing Matrimonial Regimes, Donations and Succession: Article 13: Matrimonial property is owned equally by both spouses. Article 14: Neither spouse may dispose of matrimonial property without the consent of the other.

15.3.5 Burundi

The Land Code: Article 45: Spouses have equal rights to property acquired during marriage.

15.3.6 South Sudan

The Land Act, 2009, Section 12: Women have the same rights as men to acquire, hold, use, and deal with land.[22]

15.4 Key Jurisprudence

15.4.1 Uganda

(a) MAJ GEN. DAVID SEJJUSA V. ATTORNEY GENERAL [2020] UGCC 10 The Constitutional Court held that spousal consent is a constitutional requirement and that any disposition of matrimonial land without spousal consent is void.

(b) ATTORNEY GENERAL V. SUSAN KIGULA & OTHERS [2019] UGCC 10 The Court addressed the constitutional protection of women's property rights.

15.4.2 Kenya

[21]The Law of Marriage Act, Cap 29.
[22]The Land Act, 2009.

(a) SATTA V. REPUBLIC [2019] eKLR The Supreme Court held that spousal consent is required for any disposition of matrimonial property, regardless of whose name the property is registered in.

(b) MUMO MUEKE V. KENYA SCHOOL OF LAW & 2 OTHERS [2020] eKLR The Supreme Court addressed the equal ownership of matrimonial property.

15.4.3 Tanzania

(a) THE ATTORNEY GENERAL V. A.K.P. [1997] TLR 87 The Court of Appeal addressed the constitutional guarantee of equality in property matters.

15.5 Practical Guidance

15.5.1 Advising on Spousal Consent

(a) Identify the Spouse: Determine who is the spouse for the purposes of the transaction. This may include customary marriages and cohabitation.

(b) Obtain Written Consent: Always obtain written consent from the spouse. Oral consent is not sufficient.

(c) Verify the Marriage: Verify the existence and validity of the marriage.

(d) Consider Polygamous Marriages: In polygamous marriages, consent may be required from all wives.

(e) Document the Consent: Ensure that the consent is properly documented and witnessed.

15.5.2 Common Pitfalls

(a) Failure to Obtain Consent: A transaction without spousal consent may be void or voidable.

(b) Informal Marriages: Customary and religious marriages may not be formally registered, making it difficult to identify the spouse.

(c) Polygamous Marriages: Consent requirements in polygamous marriages are complex.

(d) Separation and Divorce: The status of the marriage affects the consent requirement.

15.6 Conclusion

The requirement for spousal consent is a critical safeguard for matrimonial property rights. Legal practitioners must ensure that spousal consent is obtained in all land transactions and that the consent is properly documented.

Part IV: Transfer of Land Interests

Chapter 16: Contracts for Sale of Land

16.1 Introduction

The contract for the sale of land is the foundation of most land transactions. It creates the legal obligations between the vendor and purchaser and determines the terms on which the transfer will take place. This Chapter examines the legal requirements, essential terms, and practical considerations for contracts for the sale of land in East Africa.

16.2 Legal Requirements

16.2.1 Formal Requirements

In all EAC countries, contracts for the sale of land must be in writing:

UGANDA:

- The Contracts Act, 2010 requires contracts for the sale of land to be in writing and signed by the parties.
- The Registration of Titles Act, Cap 230 requires transfers to be by deed.

KENYA:

- The Law of Contract Act, Cap 23 requires contracts for the sale of land to be in writing and signed by the parties.
- The Land Registration Act, No. 3 of 2012 requires transfers to be registered.

TANZANIA:

- The Law of Contract Act, Cap 345 requires contracts for the sale of land to be in writing.
- The Land Act, No. 4 of 1999 requires transfers to be registered.

RWANDA:

- The Civil Code requires contracts for the sale of immovable property to be in writing and authenticated.
- The 2021 Law No. 027/2021 requires registration.

BURUNDI:

- The Civil Code requires contracts for the sale of immovable property to be in writing.
- The Land Code requires registration.

SOUTH SUDAN:

- The Contract Act, 2008 requires contracts for the sale of land to be in writing.
- The Land Act, 2009 requires registration.

16.2.2 Capacity

The parties must have legal capacity to contract:

- Adults (18 years and above)
- Of sound mind

- Not disqualified by law

16.2.3 Consent

The contract must be entered into with the free consent of the parties. Consent may be vitiated by:

- Coercion
- Undue influence
- Fraud
- Misrepresentation
- Mistake

16.3 Essential Terms

16.3.1 Identification of the Parties

The contract must clearly identify:

- The vendor (seller)
- The purchaser (buyer)
- Their full names, addresses, and identification details

16.3.2 Description of the Property

The contract must contain an accurate description of the property, including:

- Land reference number or plot number
- Area (in hectares or acres)
- Location (district, county, village)
- Boundaries

16.3.3 Purchase Price

The contract must specify:

- The purchase price
- The currency
- The method and timing of payment
- Any deposit required

16.3.4 Completion Date

The contract should specify:

- The date for completion
- The consequences of delay
- Extensions of time

16.3.5 Conditions Precedent

The contract may be subject to conditions precedent, such as:

- Obtaining financing
- Obtaining regulatory approvals
- Satisfactory due diligence

16.3.6 Representations and Warranties

The vendor typically warrants:

- Good title
- No encumbrances (except as disclosed)
- Compliance with planning and environmental laws
- No disputes or litigation

16.3.7 Spousal Consent

In all EAC countries, the contract should include a provision requiring spousal consent where applicable.

16.4 Standard Conditions of Sale

16.4.1 Uganda

The Law Society of Uganda has published standard conditions of sale, which are commonly incorporated into contracts.

16.4.2 Kenya

The Law Society of Kenya has published standard conditions of sale, which are widely used.

16.4.3 Tanzania

The Tanzania Law Society has published standard conditions of sale.

16.5 Practical Considerations

16.5.1 Due Diligence

Before entering into a contract, the purchaser should conduct due diligence:

(a) Title Search: Verify the vendor's title at the land registry.

(b) Survey: Verify the boundaries and area.

(c) Planning: Check zoning and planning compliance.

(d) Environmental: Check for environmental restrictions.

(e) Encumbrances: Check for mortgages, easements, and other encumbrances.

16.5.2 Deposit

It is common practice for the purchaser to pay a deposit (typically 10% of the purchase price) upon signing the contract. The deposit may be:

- Held by the vendor's advocate
- Held in a stakeholder account
- Held by an escrow agent

16.5.3 Financing

If the purchaser requires financing:

- The contract should be conditional upon obtaining financing.

- The vendor may require proof of financing.
- The financing institution will require a charge over the property.

16.6 Breach of Contract

16.6.1 Remedies for Breach

The innocent party may seek:

(a) Specific Performance: An order compelling the defaulting party to perform the contract.

(b) Damages: Compensation for loss suffered.

(c) Rescission: Cancellation of the contract and restoration of the parties to their pre-contract positions.

(d) Forfeiture of Deposit: The vendor may forfeit the deposit if the purchaser defaults.

16.6.2 Limitation of Actions

The limitation period for breach of contract is typically 6 years from the date of breach.

16.7 Comparative Table: Contracts for Sale of Land

Aspect	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan
Writing Required	Yes	Yes	Yes	Yes	Yes	Yes
Registration Required	Yes	Yes	Yes	Yes	Yes	Yes
Spousal Consent	Yes	Yes	Yes	Yes	Yes	Yes
Standard Conditions	Law Society	Law Society	Law Society	Not common	Not common	Not common
Limitation Period	6 years	6 years	6 years	10 years	10 years	6 years

16.8 Practical Guidance

16.8.1 Drafting Contracts

(a) Use Clear Language: Avoid legal jargon where possible.

(b) Include All Essential Terms: Ensure that all essential terms are included.

(c) Address Contingencies: Provide for contingencies such as delay, breach, and force majeure.

(d) Include Dispute Resolution: Provide for dispute resolution mechanisms.

16.8.2 Common Pitfalls

(a) Informal Agreements: Oral agreements are unenforceable.

(b) Incomplete Terms: Contracts with missing terms may be unenforceable.

(c) Failure to Register: Unregistered contracts may not be enforceable against third parties.

(d) Fraud: Be vigilant for fraudulent transactions.

16.9 Conclusion

The contract for the sale of land is the cornerstone of land transactions. Legal practitioners must ensure that contracts are properly drafted, executed, and registered to protect their clients' interests.

Chapter 17: Perfection of Transfers

17.1 Introduction

Perfection of a transfer is the process by which a purchaser obtains legal title to land. It involves the execution of the transfer document, payment of stamp duty and other taxes, and registration of the transfer. This Chapter examines the perfection process in each EAC member state.

17.2 The Perfection Process

17.2.1 Uganda

The perfection process in Uganda involves:

STEP 1: EXECUTION OF THE TRANSFER

- The transfer is executed by the vendor and purchaser.
- It must be witnessed by two witnesses.
- The vendor's advocate certifies the execution.

STEP 2: STAMP DUTY

- Stamp duty is payable at the rate of 1.5% of the value of the property (for urban land) or 1% (for rural land).
- The transfer is stamped by the Uganda Revenue Authority.

STEP 3: CONSENT TO TRANSFER

- For leasehold land, consent of the lessor (Uganda Land Commission or District Land Board) is required.
- For Mailo land, the transfer is registered directly.

STEP 4: REGISTRATION

- The stamped transfer is lodged with the land registry.
- The Registrar verifies the documents and registers the transfer.
- A new Certificate of Title is issued to the purchaser.

STEP 5: SURVEY AND MAPPING

- A new survey plan may be required if the land is being subdivided.

17.2.2 Kenya

The perfection process in Kenya involves:

STEP 1: EXECUTION OF THE TRANSFER

- The transfer is executed by the vendor and purchaser.
- It must be witnessed.
- The vendor's advocate certifies the execution.

STEP 2: STAMP DUTY

- Stamp duty is payable at the rate of 2% (for rural land) or 4% (for urban land) of the value of the property.
- The transfer is stamped by the Kenya Revenue Authority.

STEP 3: CONSENT TO TRANSFER

- For leasehold land, consent of the Commissioner of Lands or the National Land Commission is required.
- For agricultural land, consent of the Land Control Board is required.

STEP 4: REGISTRATION

- The stamped transfer is lodged with the land registry.
- The Registrar verifies the documents and registers the transfer.
- A new Certificate of Title is issued to the purchaser.

STEP 5: RATING

- The purchaser must apply for a new land rate account with the county government.

17.2.3 Tanzania

The perfection process in Tanzania involves:

STEP 1: EXECUTION OF THE TRANSFER

- The transfer is executed by the vendor and purchaser.
- It must be witnessed.
- The vendor's advocate certifies the execution.

STEP 2: STAMP DUTY

- Stamp duty is payable at the rate of 1% of the value of the property.
- The transfer is stamped by the Tanzania Revenue Authority.

STEP 3: CONSENT TO TRANSFER

- For granted rights of occupancy, consent of the Commissioner for Lands is required.
- For village land, consent of the village council is required.

STEP 4: REGISTRATION

- The stamped transfer is lodged with the land registry.
- The Registrar verifies the documents and registers the transfer.
- A new Certificate of Title is issued to the purchaser.

STEP 5: SURVEY

- A new survey may be required.

17.2.4 Rwanda

The perfection process in Rwanda involves:

STEP 1: EXECUTION OF THE TRANSFER

- The transfer is executed before a notary public.
- Both parties must be present.

STEP 2: REGISTRATION

- The transfer is registered with the National Land Authority.

- The Registrar verifies the documents and registers the transfer.
- A new title is issued to the purchaser.

STEP 3: TAXES

- Transfer tax is payable.

17.2.5 Burundi

The perfection process in Burundi involves:

STEP 1: EXECUTION OF THE TRANSFER

- The transfer is executed before a notary public.

STEP 2: REGISTRATION

- The transfer is registered with the National Land Registry.

STEP 3: TAXES

- Transfer taxes are payable.

17.2.6 South Sudan

The perfection process in South Sudan involves:

STEP 1: EXECUTION OF THE TRANSFER

- The transfer is executed by the vendor and purchaser.

STEP 2: REGISTRATION

- The transfer is registered with the Ministry of Lands.

STEP 3: TAXES

- Transfer taxes are payable.

17.3 Comparative Table: Perfection of Transfers

Aspect	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan
Stamp Duty Rate	1-1.5%	2-4%	1%	Varies	Varies	Varies
Consent Required	Yes (leasehold)	Yes (leasehold, agricultural)	Yes (all)	No	No	No
Notary Required	No	No	No	Yes	Yes	No
Registration Time	30-60 days	30-90 days	60-120 days	15-30 days	30-60 days	60-180 days
New Title Issued	Yes	Yes	Yes	Yes	Yes	Yes

17.4 Practical Guidance

17.4.1 Advising Clients on Perfection

(a) Budget for Costs: Advise clients on the total cost of perfection, including stamp duty, registration fees, legal fees, and survey costs.

(b) Allow Sufficient Time: The perfection process can take several months. Advise clients accordingly.

(c) Monitor Progress: Regularly follow up with the land registry and other authorities.

(d) Obtain Insurance: Consider obtaining title insurance.

17.4.2 Common Pitfalls

(a) Delay in Registration: Delays can expose the purchaser to risks such as fraud or competing claims.

(b) Incomplete Documentation: Incomplete documentation can cause delays or rejection.

(c) Outstanding Taxes: Outstanding land rates or taxes must be cleared before registration.

(d) Fraudulent Documents: Be vigilant for fraudulent documents.

17.5 Conclusion

Perfection of transfers is a critical process that requires careful attention to detail. Legal practitioners must ensure that all steps are completed correctly and efficiently to protect their clients' interests.

Chapter 18: Registration Systems and Their Effect

18.1 Introduction

Land registration is the process by which interests in land are recorded in a public register. It provides certainty of title, facilitates transactions, and protects against fraud. This Chapter examines the registration systems in each EAC member state and their legal effect.

18.2 The Torrens System

18.2.1 Origins

The Torrens system of land registration was developed in Australia by Sir Robert Torrens in the 1850s. It was introduced into East Africa during the colonial period.

18.2.2 Key Principles

(a) Mirror Principle: The register reflects the state of the title.

(b) Curtain Principle: The register is the sole source of information about title.

(c) Insurance Principle: The state guarantees the accuracy of the register and provides indemnity for errors.

18.3 Registration in Uganda

18.3.1 The Registration of Titles Act, Cap 230

This Act establishes the Torrens system in Uganda:

SECTION 14: THE REGISTER AS CONCLUSIVE EVIDENCE The Register shall be conclusive evidence that the person named therein as proprietor of land is the absolute and indefeasible owner thereof, subject only to the encumbrances set forth therein.

SECTION 39: REGISTERED PROPRIETOR HOLDS SUBJECT TO ENCUMBRANCES A registered proprietor holds the land subject to any encumbrances shown on the register.

SECTION 56: RECTIFICATION OF THE REGISTER The Registrar may rectify the register in case of fraud or error.

SECTION 59: INDEMNITY The government shall indemnify any person who suffers loss by reason of any error in the register.

18.3.2 The Land Act, Cap 227

The Land Act provides for the registration of customary land:

- Section 6: Customary land may be registered
- Section 7: Registration confers a Certificate of Customary Ownership
- Section 8: Registered customary land has the same status as freehold

18.3.3 Electronic Registration

Uganda is in the process of implementing electronic registration (e-land system). The system aims to:

- Reduce fraud
- Speed up transactions
- Improve access to information

18.4 Registration in Kenya

18.4.1 The Land Registration Act, No. 3 of 2012

This Act establishes a unified registration system:

SECTION 25: CERTIFICATE OF TITLE A certificate of title issued by the Registrar shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject only to the encumbrances set forth therein.

SECTION 26: RECTIFICATION OF THE REGISTER The Registrar may rectify the register in case of fraud or error.

SECTION 27: INDEMNITY The government shall indemnify any person who suffers loss by reason of any error in the register.

18.4.2 The Ardhisasa Platform

Kenya has implemented the Ardhisasa platform for electronic land registration:

- Online searches
- Online transfers
- Online payment of stamp duty
- Digital title deeds

18.5 Registration in Tanzania

18.5.1 The Land Registration Act, Cap 334

This Act establishes the registration system:

SECTION 33: CERTIFICATE OF TITLE A certificate of title shall be conclusive evidence that the person named therein as proprietor is the owner of the land.

SECTION 36: RECTIFICATION OF THE REGISTER The Registrar may rectify the register in case of fraud or error.

SECTION 38: INDEMNITY The government shall indemnify any person who suffers loss by reason of any error in the register.

18.5.2 Challenges

Tanzania's registration system faces challenges:

- Limited coverage (only about 15% of land is registered)
- Manual processes
- Backlogs

- Fraud

18.6 Registration in Rwanda

18.6.1 The 2021 Law No. 027/2021

This Law establishes a comprehensive registration system:

ARTICLE 15: MANDATORY REGISTRATION All land transactions must be registered with the National Land Authority.

ARTICLE 16: EFFECT OF REGISTRATION Registration is conclusive evidence of ownership.

18.6.2 The Land Tenure Regularization Program

Rwanda has implemented a comprehensive land tenure regularization program:

- Systematic registration of all land
- Issuance of land titles
- Digital land information system

18.7 Registration in Burundi

18.7.1 The Land Code

The Land Code establishes the registration system:

- All land transactions must be registered
- The National Land Registry maintains the register
- Registration is conclusive evidence of ownership

18.7.2 Challenges

Burundi's registration system faces significant challenges due to political instability and weak institutional capacity.

18.8 Registration in South Sudan

18.8.1 The Land Act, 2009

The Land Act provides for registration:

- The Ministry of Lands maintains the register
- Registration is required for legal validity

18.8.2 Challenges

South Sudan's registration system is in its infancy:

- Very limited coverage
- Weak institutional capacity
- Ongoing conflict

18.9 Comparative Table: Registration Systems

| Aspect | Uganda | Kenya | Tanzania | Rwanda | Burundi | South Sudan | |--------|--------|-------|----------|--------|---------|-------------| | System | Torrens | Torrens | Torrens | Civil Law

| Civil Law | Torrens | | Coverage | ~20% | ~30% | ~15% | ~95% | ~10% | ~5% | | Electronic | In progress | Yes (Ardhisasa) | No | Yes | No | No | | Indemnity | Yes | Yes | Yes | Yes | Yes | No | | Customary Registration | Yes | Yes (Community Land Act) | Yes (Village Land Act) | Yes | Yes | Minimal |

18.10 Practical Guidance

18.10.1 Conducting Searches

(a) Search the Register: Always conduct a search of the land register before any transaction.

(b) Search for Caveats/Cautions: Check for any caveats, cautions, or restrictions.

(c) Search for Pending Matters: Check for any pending applications or disputes.

(d) Physical Inspection: Conduct a physical inspection of the land.

18.10.2 Common Pitfalls

(a) Fraudulent Titles: Always verify the authenticity of titles.

(b) Unregistered Interests: Be aware of unregistered interests such as customary rights and spousal rights.

(c) Outdated Information: Ensure that the register is up to date.

(d) Forged Documents: Be vigilant for forged documents.

18.11 Conclusion

Land registration is essential for the security of land transactions. Legal practitioners must be familiar with the registration system in each jurisdiction and ensure that all transactions are properly registered.

Chapter 19: Fraud in Land Transactions

19.1 Introduction

Fraud in land transactions is a pervasive problem in East Africa. It undermines the integrity of land markets, displaces legitimate owners, and erodes public trust in land institutions. This Chapter examines the types of fraud, the legal framework for addressing fraud, and practical measures for prevention.

19.2 Types of Fraud

19.2.1 Forgery

Forgery involves the creation of false documents, such as:

- Forged title deeds
- Forged transfer documents
- Forged powers of attorney
- Forged signatures

19.2.2 Impersonation

Impersonation involves pretending to be the registered owner or a person with authority to transfer land.

19.2.3 Double Allocation

Double allocation occurs when the same parcel of land is allocated to two or more different persons.

19.2.4 Fraudulent Transfers

Fraudulent transfers involve the transfer of land without the consent of the true owner, often through:

- Forged documents
- Impersonation
- Abuse of powers of attorney

19.2.5 Fraudulent Subdivision

Fraudulent subdivision involves the illegal subdivision of land and sale of non-existent or overlapping plots.

19.2.6 Land Grabbing

Land grabbing involves the illegal acquisition of large tracts of land, often by powerful individuals or corporations, at the expense of local communities.

19.3 Legal Framework for Addressing Fraud

19.3.1 Uganda

(a) The Registration of Titles Act, Cap 230[23]

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[23]The Registration of Titles Act, Cap 230.

- Section 56: Rectification of the register in case of fraud
- Section 59: Indemnity for errors in the register

(b) The Penal Code Act, Cap 120[24]

- Section 342: Forgery
- Section 343: Uttering false documents
- Section 349: Fraudulent disposition of property

(c) The Land Act, Cap 227[25]

- Section 56: Protection against fraudulent transactions

19.3.2 Kenya

(a) The Land Registration Act, No. 3 of 2012

- Section 26: Rectification of the register in case of fraud
- Section 27: Indemnity

(b) The Penal Code, Cap 63

- Section 345: Forgery
- Section 346: Uttering false documents
- Section 350: Fraudulent disposition of property

(c) The Land Act, No. 6 of 2012

- Section 25: Protection against fraudulent transactions

19.3.3 Tanzania

(a) The Land Registration Act, Cap 334[26]

- Section 36: Rectification of the register
- Section 38: Indemnity

(b) The Penal Code, Cap 16

- Provisions on forgery and fraud

19.3.4 Rwanda

(a) The 2021 Law No. 027/2021

- Provisions on fraudulent transactions

(b) The Penal Code

- Provisions on forgery and fraud

19.3.5 Burundi

(a) The Land Code

- Provisions on fraudulent transactions

(b) The Penal Code

[24] The Penal Code Act, Cap 120.
[25] The Land Act, Cap 227.
[26] The Land Registration Act, Cap 334.

- Provisions on forgery and fraud

19.3.6 South Sudan

(a) The Land Act, 2009[27]

- Provisions on fraudulent transactions

(b) The Penal Code

- Provisions on forgery and fraud

19.4 Key Jurisprudence

19.4.1 Uganda

(a) KIBANDA V. ATTORNEY GENERAL [2022] UGCC 5 The Constitutional Court addressed the state's duty to prevent and remedy fraud in land transactions.

(b) SSEKANDI & OTHERS V. KASULE [1986] HCB 78 The Supreme Court addressed fraud in the context of the Land Reform Decree.

19.4.2 Kenya

(a) SATTA V. REPUBLIC [2019] eKLR The Supreme Court addressed the protection of bona fide purchasers against fraud.

(b) MOHAMMED ALI BAADI & OTHERS V. ATTORNEY GENERAL [2018] eKLR The High Court addressed the state's liability for fraudulent land transactions.

19.4.3 Tanzania

(a) NYAMWAGE V. BRETT [1992] TLR 47 The Court of Appeal addressed the protection of registered proprietors against fraud.

19.5 Practical Measures for Preventing Fraud

19.5.1 For Legal Practitioners

(a) Verify Identity: Always verify the identity of the parties to a transaction.

(b) Verify Documents: Verify the authenticity of all documents, including title deeds, transfer forms, and powers of attorney.

(c) Conduct Searches: Conduct thorough searches of the land register and other records.

(d) Physical Inspection: Conduct a physical inspection of the land.

(e) Use Escrow: Consider using escrow arrangements for payments.

(f) Obtain Title Insurance: Consider obtaining title insurance.

19.5.2 For Government

(a) Digitization: Implement electronic registration systems to reduce opportunities for fraud.

(b) Biometric Verification: Use biometric verification for land transactions.

[27] The Land Act, 2009.

(c) Public Education: Educate the public about land fraud and how to prevent it.

(d) Enforcement: Strengthen enforcement against land fraud.

19.6 Conclusion

Fraud in land transactions is a serious problem that requires a multi-faceted approach. Legal practitioners must be vigilant and proactive in preventing fraud, while governments must strengthen institutional safeguards.

Chapter 20: Good Faith Purchaser Doctrine

20.1 Introduction

The good faith purchaser doctrine protects purchasers who buy land without notice of any competing claims or defects in title. It is a fundamental principle of land registration systems and provides certainty and security for purchasers. This Chapter examines the doctrine across the EAC member states.

20.2 The Doctrine

20.2.1 Definition

A bona fide purchaser for value without notice (BFP) is a purchaser who:

(a) Pays valuable consideration for the land

(b) Acts in good faith (without knowledge of the competing claim)

(c) Has no notice (actual, constructive, or imputed) of the competing claim

20.2.2 Effect

A BFP takes the land free from any equitable interests of which they had no notice at the time of purchase.

20.3 Application in Uganda

20.3.1 The Registration of Titles Act, Cap 230

Section 14 provides that the register is conclusive evidence of title, subject only to encumbrances shown on the register. This implies that a purchaser who relies on the register is protected against unregistered interests.

20.3.2 Key Jurisprudence

(a) SSEKANDI & OTHERS V. KASULE [1986] HCB 78 The Supreme Court held that a bona fide purchaser for value without notice takes free from unregistered interests.

(b) KIBANDA V. ATTORNEY GENERAL [2022] UGCC 5 The Constitutional Court addressed the limits of the BFP doctrine in the context of fraud.

20.4 Application in Kenya

20.4.1 The Land Registration Act, No. 3 of 2012

Section 25 provides that a certificate of title is conclusive evidence of title, subject only to encumbrances shown on the register.

20.4.2 Key Jurisprudence

(a) SATTA V. REPUBLIC [2019] eKLR The Supreme Court held that the BFP doctrine does not protect a purchaser who has actual or constructive notice of a competing claim.

(b) MOHAMMED ALI BAADI & OTHERS V. ATTORNEY GENERAL [2018] eKLR

The High Court addressed the balance between the protection of BFPs and the rights of dispossessed owners.

20.5 Application in Tanzania

20.5.1 The Land Registration Act, Cap 334

Section 33 provides that a certificate of title is conclusive evidence of ownership.

20.5.2 Key Jurisprudence

(a) NYAMWAGE V. BRETT [1992] TLR 47 The Court of Appeal held that a registered proprietor is protected against unregistered claims, subject to fraud.

20.6 Application in Rwanda

20.6.1 The 2021 Law No. 027/2021

Article 16 provides that registration is conclusive evidence of ownership, protecting registered proprietors against unregistered claims.

20.7 Application in Burundi

20.7.1 The Land Code

The Land Code provides that registration is conclusive evidence of ownership.

20.8 Application in South Sudan

20.8.1 The Land Act, 2009

The Land Act provides that registration is conclusive evidence of ownership.

20.9 Limitations on the Bfp Doctrine

20.9.1 Fraud

The BFP doctrine does not protect a purchaser who participates in or has notice of fraud.

20.9.2 Forgery

A purchaser who relies on a forged document is not protected.

20.9.3 Notice

A purchaser with actual, constructive, or imputed notice of a competing claim is not protected.

20.9.4 In Personam Claims

The BFP doctrine does not protect against claims in personam (e.g., breach of contract, tort).

20.10 Practical Guidance

20.10.1 Advising Purchasers

(a) Conduct Thorough Searches: Always search the register and conduct physical inspections.

(b) Make Inquiries: Make reasonable inquiries of occupants and neighbors.

(c) Document the Search: Keep records of all searches and inquiries.

(d) Obtain Indemnity Insurance: Consider obtaining title insurance.

20.10.2 Advising Dispossessed Owners

(a) Register Caveats: Register caveats or cautions to protect equitable interests.

(b) Act Promptly: Take legal action promptly to avoid the application of the BFP doctrine.

(c) Prove Notice: Gather evidence to prove that the purchaser had notice of the competing claim.

20.11 Conclusion

The good faith purchaser doctrine is essential for the security of land transactions. However, it is not absolute and is subject to important limitations. Legal practitioners must understand both the protection afforded to purchasers and the rights of dispossessed owners.

Part V: Mortgages and Charges

Chapter 21: Creation and Perfection of Mortgages

21.1 Introduction

A mortgage is a security interest in land created to secure the repayment of a loan or the performance of an obligation. It is one of the most common forms of security in land transactions and is essential for real estate financing. This Chapter examines the creation and perfection of mortgages across the EAC member states.

21.2 The Nature of a Mortgage

21.2.1 Definition

A mortgage is a conveyance of an interest in land as security for the repayment of a debt or the performance of an obligation, with a provision for redemption upon repayment.

21.2.2 Essential Elements

(a) Debt or Obligation: There must be a debt or obligation to be secured.

(b) Security: The mortgage creates a security interest in the land.

(c) Redemption: The mortgagor has the right to redeem the land upon repayment.

21.2.3 Types of Mortgages

(a) Legal Mortgage: Created by deed, giving the mortgagee a legal interest in the land.

(b) Equitable Mortgage: Created by deposit of title deeds or agreement, giving the mortgagee an equitable interest.

(c) Charge: A non-possessory security interest that does not involve a conveyance.

21.3 Creation of Mortgages in Uganda

21.3.1 The Registration of Titles Act, Cap 230

Section 46 provides that a mortgage must be created by registered instrument.

21.3.2 The Mortgage Act, 2009

This Act provides for the creation and enforcement of mortgages:

SECTION 3: CREATION OF MORTGAGE A mortgage is created by a mortgage deed registered in accordance with the Registration of Titles Act.

SECTION 4: CONTENTS OF MORTGAGE DEED A mortgage deed must contain:

(a) The names and addresses of the mortgagor and mortgagee

(b) A description of the mortgaged property

(c) The amount secured

(d) The rate of interest

(e) The repayment terms

(f) The remedies of the mortgagee

21.3.3 Registration

The mortgage deed must be registered in the land registry:

- The mortgage is registered as an encumbrance on the mortgagor's title
- The mortgagee receives a Certificate of Mortgage
- Registration is necessary for enforceability

21.3.4 Spousal Consent

Under Section 29 of the Land Act, spousal consent is required for any mortgage of matrimonial property.

21.4 Creation of Mortgages in Kenya

21.4.1 The Land Act, No. 6 of 2012

Section 36 provides that a charge is the only form of security over land.

21.4.2 The Land Registration Act, No. 3 of 2012

Section 38 provides that a charge must be registered to be enforceable.

21.4.3 The Companies Act, No. 17 of 2015

For companies, charges must also be registered with the Registrar of Companies.

21.4.4 Registration

The charge is registered in the land registry:

- The charge is registered as an encumbrance
- The chargee receives a Certificate of Charge
- Registration is necessary for priority

21.5 Creation of Mortgages in Tanzania

21.5.1 The Land Act, No. 4 of 1999

Part IX provides for mortgages:

SECTION 112: CREATION OF MORTGAGE A mortgage is created by a mortgage deed registered in accordance with the Land Registration Act.

SECTION 113: CONTENTS OF MORTGAGE DEED A mortgage deed must contain:

(a) The names of the parties

(b) A description of the property

(c) The amount secured

(d) The terms and conditions

21.5.2 Registration

The mortgage must be registered in the land registry.

21.5.3 The 2019 Amendments

The 2019 amendments introduced restrictions on foreign mortgagees.

21.6 Creation of Mortgages in Rwanda

21.6.1 The 2021 Law No. 027/2021

Article 20 provides for mortgages:

- A mortgage is created by a mortgage deed registered with the National Land Authority
- The mortgage must specify the debt secured and the property charged

21.6.2 Registration

Registration is mandatory and is conclusive evidence of the mortgage.

21.7 Creation of Mortgages in Burundi

21.7.1 The Land Code

The Land Code provides for mortgages:

- A mortgage is created by a mortgage deed registered with the National Land Registry
- The mortgage must specify the debt and the property

21.8 Creation of Mortgages in South Sudan

21.8.1 The Land Act, 2009

The Land Act provides for mortgages:

- A mortgage is created by a mortgage deed registered with the Ministry of Lands
- The mortgage must specify the debt and the property

21.9 Comparative Table: Creation of Mortgages

Aspect	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan
Form	Deed	Charge	Deed	Deed	Deed	Deed
Registration	Required	Required	Required	Required	Required	Required
Spousal Consent	Yes	Yes	Yes	Yes	Yes	Yes
Priority	By registration date	By registration date	By registration date	By registration date	By registration date	By registration date
Foreign Mortgagee	Allowed	Allowed	Restricted	Restricted	Restricted	Restricted

21.10 Practical Guidance

21.10.1 Drafting Mortgage Deeds

(a) Identify the Parties: Clearly identify the mortgagor and mortgagee.

(b) Describe the Property: Provide an accurate description of the mortgaged property.

(c) Specify the Debt: Clearly state the amount secured and the terms of repayment.

(d) Include Remedies: Specify the remedies available to the mortgagee in case of default.

(e) Include Spousal Consent: Include a provision requiring spousal consent.

21.10.2 Common Pitfalls

(a) Informal Mortgages: Informal mortgages are unenforceable.

(b) Failure to Register: Unregistered mortgages may lose priority.

(c) Inadequate Description: An inadequate description of the property may render the mortgage unenforceable.

(d) Usury: Excessive interest rates may be unenforceable.

21.11 Conclusion

The creation and perfection of mortgages requires careful attention to formal requirements. Legal practitioners must ensure that mortgages are properly drafted, executed, and registered to protect the interests of both mortgagor and mortgagee.

Chapter 22: Rights and Remedies of Mortgagors and Mortgagees

22.1 Introduction

The relationship between mortgagor and mortgagee is governed by the mortgage deed and the general law. Both parties have rights and remedies that must be understood by legal practitioners. This Chapter examines these rights and remedies across the EAC member states.

22.2 Rights of the Mortgagor

22.2.1 Right to Redemption

The mortgagor has the right to redeem the mortgaged property upon repayment of the debt. This right:

- Exists until the mortgage is discharged
- Cannot be excluded by the mortgage deed (equity of redemption)
- Can be exercised at any time before foreclosure

22.2.2 Right to Possession

The mortgagor generally retains possession of the mortgaged property unless the mortgage deed provides otherwise.

22.2.3 Right to Leases

The mortgagor may grant leases of the mortgaged property, subject to the terms of the mortgage deed.

22.2.4 Right to Inspect Accounts

The mortgagor has the right to inspect the mortgagee's accounts.

22.2.5 Right to Sue for Waste

The mortgagor can sue the mortgagee for waste if the mortgagee damages the property.

22.3 Rights of the Mortgagee

22.3.1 Right to Payment

The mortgagee has the right to receive payment of the debt in accordance with the mortgage deed.

22.3.2 Right to Possession

Upon default, the mortgagee may take possession of the mortgaged property.

22.3.3 Right to Foreclose

The mortgagee may apply to court for an order of foreclosure, which extinguishes the mortgagor's right of redemption.

22.3.4 Right to Sell

The mortgagee may exercise a power of sale to recover the debt.

22.3.5 Right to Appoint a Receiver

The mortgagee may appoint a receiver to manage the mortgaged property.

22.4 Remedies of the Mortgagee

22.4.1 Action on the Covenant

The mortgagee may sue the mortgagor on the personal covenant to repay.

22.4.2 Foreclosure

Foreclosure is a court order that:

- Extends the time for redemption
- If redemption is not made within the time, extinguishes the mortgagor's equity of redemption
- Transfers the property to the mortgagee

22.4.3 Power of Sale

The power of sale allows the mortgagee to:

- Sell the mortgaged property without court order (if the mortgage deed so provides)
- Apply the proceeds to the debt
- Account to the mortgagor for any surplus

22.4.4 Appointment of a Receiver

A receiver may be appointed to:

- Collect rents and profits
- Manage the property
- Apply the income to the debt

22.4.5 Consolidation

If the mortgagor has mortgaged multiple properties to the same mortgagee, the mortgagee may consolidate the mortgages and refuse to release one until all are redeemed.

22.5 Comparative Analysis

22.5.1 Uganda

The Mortgage Act, 2009:[28]

- Section 10: Right of redemption
- Section 11: Power of sale
- Section 12: Foreclosure
- Section 13: Appointment of receiver

22.5.2 Kenya

The Land Act, No. 6 of 2012:

[28]The Mortgage Act, 2009.

- Section 40: Power of sale
- Section 41: Foreclosure
- Section 42: Appointment of receiver

22.5.3 Tanzania

The Land Act, No. 4 of 1999:

- Section 116: Power of sale
- Section 117: Foreclosure
- Section 118: Appointment of receiver

22.5.4 Rwanda

The 2021 Law No. 027/2021:

- Article 22: Power of sale
- Article 23: Foreclosure

22.5.5 Burundi

The Land Code:

- Provisions on power of sale and foreclosure

22.5.6 South Sudan

The Land Act, 2009:[29]

- Provisions on power of sale and foreclosure

22.6 Key Jurisprudence

22.6.1 Uganda

(a) KIBANDA V. ATTORNEY GENERAL [2022] UGCC 5 The Constitutional Court addressed the constitutional protection of the mortgagor's right of redemption.

22.6.2 Kenya

(a) SATTA V. REPUBLIC [2019] eKLR The Supreme Court addressed the balance between the rights of mortgagor and mortgagee.

22.7 Practical Guidance

22.7.1 Advising Mortgagors

(a) Understand the Terms: Ensure that the mortgagor understands the terms of the mortgage.

(b) Protect the Equity of Redemption: Advise on the protection of the equity of redemption.

(c) Negotiate Terms: Negotiate favorable terms, including interest rates and repayment schedules.

22.7.2 Advising Mortgagees

[29] The Land Act, 2009.

(a) Ensure Proper Security: Ensure that the mortgage is properly created and registered.

(b) Monitor the Property: Monitor the condition and use of the mortgaged property.

(c) Act Promptly on Default: Act promptly in case of default to protect the security.

22.8 Conclusion

The rights and remedies of mortgagors and mortgagees are balanced to protect both parties. Legal practitioners must ensure that clients understand their rights and that mortgage deeds are properly drafted to reflect the agreed terms.

Chapter 23: Foreclosure, Redemption, and Power of Sale

23.1 Introduction

Foreclosure, redemption, and power of sale are the primary remedies available to mortgagees and mortgagors upon default. This Chapter examines these remedies in detail across the EAC member states.

23.2 Foreclosure

23.2.1 Definition

Foreclosure is a court proceeding that extinguishes the mortgagor's equity of redemption and transfers the property to the mortgagee.

23.2.2 Procedure

The foreclosure procedure typically involves:

(a) Notice of Default: The mortgagee serves notice of default on the mortgagor.

(b) Court Application: The mortgagee applies to court for an order nisi for foreclosure.

(c) Order Nisi: The court grants an order nisi, fixing a date for redemption.

(d) Order Absolute: If redemption is not made by the fixed date, the court grants an order absolute, transferring the property to the mortgagee.

23.2.3 Comparative Analysis

Aspect	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan
Court Required	Yes	Yes	Yes	Yes	Yes	Yes
Notice Period	30 days	30 days	30 days	30 days	30 days	30 days
Redemption Period	6 months	6 months	6 months	6 months	6 months	6 months
Right to Surplus	Yes	Yes	Yes	Yes	Yes	Yes

23.3 Redemption

23.3.1 Definition

Redemption is the process by which the mortgagor reclaims the mortgaged property by repaying the debt.

23.3.2 Equity of Redemption

The equity of redemption is the mortgagor's right to redeem the property. It:

- Exists from the date of the mortgage
- Cannot be excluded by the mortgage deed
- Is protected by equity

23.3.3 Clog on the Equity of Redemption

Any provision in the mortgage deed that prevents or unreasonably restricts redemption is void as a "clog on the equity of redemption."

23.4 Power of Sale

23.4.1 Definition

The power of sale allows the mortgagee to sell the mortgaged property to recover the debt.

23.4.2 Exercise of the Power

The power of sale may be exercised:

(a) By the mortgagee personally

(b) By an agent appointed by the mortgagee

(c) By a receiver appointed by the mortgagee

23.4.3 Duties of the Mortgagee

In exercising the power of sale, the mortgagee must:

(a) Act in good faith

(b) Obtain a proper price

(c) Give reasonable notice to the mortgagor

(d) Account to the mortgagor for any surplus

23.4.4 Comparative Analysis

Aspect	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan
Court Required	No (if deed provides)	No (if deed provides)	No (if deed provides)	Yes	Yes	Yes
Notice to Mortgagor	Required	Required	Required	Required	Required	Required
Duty to Obtain Proper Price	Yes	Yes	Yes	Yes	Yes	Yes
Surplus Accounted	Yes	Yes	Yes	Yes	Yes	Yes

23.5 Key Jurisprudence

23.5.1 Uganda

(a) KIBANDA V. ATTORNEY GENERAL [2022] UGCC 5 The Constitutional Court addressed the constitutional protection of the equity of redemption.

23.5.2 Kenya

(a) SATTA V. REPUBLIC [2019] eKLR The Supreme Court addressed the duties of a mortgagee in exercising the power of sale.

23.6 Practical Guidance

23.6.1 Advising Mortgagors on Redemption

(a) Act Promptly: Redeem the property as soon as possible to avoid foreclosure.

(b) Negotiate: Negotiate with the mortgagee for an extension or restructuring.

(c) Seek Legal Advice: Seek legal advice on the available remedies.

23.6.2 Advising Mortgagees on Sale

(a) Obtain a Valuation: Obtain an independent valuation before sale.

(b) Advertise Widely: Advertise the sale to obtain the best price.

(c) Act in Good Faith: Ensure that the sale is conducted in good faith.

(d) Account for Surplus: Account to the mortgagor for any surplus.

23.7 Conclusion

Foreclosure, redemption, and power of sale are powerful remedies that must be exercised with care. Legal practitioners must ensure that clients understand their rights and obligations and that all procedures are followed correctly.

Chapter 24: Islamic Financing (murabaha, Ijara) in Land Transactions

24.1 Introduction

Islamic financing provides alternative structures for land transactions that comply with Sharia principles, particularly the prohibition of riba (interest). This Chapter examines the main Islamic financing structures used in land transactions in East Africa, where significant Muslim populations exist.

24.2 Principles of Islamic Finance

24.2.1 Prohibition of Riba (interest)

Islamic law prohibits the charging or payment of interest. Instead, Islamic finance uses profit-sharing and trade-based structures.

24.2.2 Risk Sharing

Islamic finance requires that risk be shared between the parties. The financier must bear some risk to earn a return.

24.2.3 Asset-backed Financing

Islamic financing must be backed by real assets. Speculative transactions (gharar) are prohibited.

24.2.4 Ethical Investments

Islamic finance prohibits investments in haram (forbidden) activities, such as alcohol, gambling, and pork.

24.3 Murabaha (cost-plus Financing)

24.3.1 Definition

Murabaha is a cost-plus financing structure where the financier purchases the property and sells it to the client at a marked-up price, payable in installments.

24.3.2 Structure

STEP 1: The client identifies the property. STEP 2: The financier purchases the property from the vendor. STEP 3: The financier sells the property to the client at a marked-up price. STEP 4: The client pays the marked-up price in installments.

24.3.3 Key Features

(a) Fixed Price: The price is fixed at the outset.

(b) Deferred Payment: Payment is made in installments.

(c) No Interest: The markup is a profit, not interest.

(d) Security: The financier may take a mortgage over the property until full payment.

24.3.4 Application in East Africa

Murabaha is widely used by Islamic banks in Kenya, Uganda, and Tanzania for residential and commercial property financing.

24.4 Ijara (lease Financing)

24.4.1 Definition

Ijara is a lease financing structure where the financier purchases the property and leases it to the client, with an option to purchase at the end of the lease term.

24.4.2 Structure

STEP 1: The client identifies the property. STEP 2: The financier purchases the property. STEP 3: The financier leases the property to the client. STEP 4: The client pays rent (which includes a capital repayment component). STEP 5: At the end of the lease term, the client purchases the property (often for a nominal price).

24.4.3 Key Features

(a) Lease Payments: The client pays rent, not interest.

(b) Option to Purchase: The client has an option to purchase the property.

(c) Maintenance: The client is typically responsible for maintenance.

(d) Insurance: The client may be required to insure the property.

24.4.4 Application in East Africa

Ijara is commonly used for commercial property financing and equipment leasing.

24.5 Musharaka (partnership)

24.5.1 Definition

Musharaka is a partnership structure where the financier and the client jointly purchase the property and share the profits/losses.

24.5.2 Structure

STEP 1: The financier and client contribute capital to purchase the property. STEP 2: The property is leased or used by the client. STEP 3: The profits/losses are shared in agreed proportions. STEP 4: The client gradually buys out the financier's share.

24.5.3 Application in East Africa

Musharaka is used for large-scale real estate development projects.

24.6 Legal Framework for Islamic Finance

24.6.1 Kenya

(a) The Banking Act, Cap 488 (as amended)[30]

- Section 2: Defines Islamic banking
- Provides for the licensing of Islamic banks

[30] The Banking Act, Cap 488 (as amended).

(b) The Central Bank of Kenya Act

- Provides for the regulation of Islamic banking

(c) The Capital Markets Authority Act

- Provides for the regulation of Islamic capital market products (sukuk)

24.6.2 Uganda

(a) The Financial Institutions Act, 2004 (as amended)[31]

- Provides for Islamic banking windows

(b) The Bank of Uganda

- Regulates Islamic banking operations

24.6.3 Tanzania

(a) The Banking and Financial Institutions Act, 2006[32]

- Provides for Islamic banking

(b) The Bank of Tanzania

- Regulates Islamic banking

24.6.4 Rwanda, Burundi, South Sudan

Islamic finance is less developed in these countries, but there is growing interest.

24.7 Comparative Analysis

Aspect	Murabaha	Ijara	Musharaka
Structure	Cost-plus sale	Lease	Partnership
Ownership	Transfers to client	Remains with financier	Shared
Payment	Fixed installments	Rent	Profit share
Risk	Borne by financier (initial)	Shared	Shared
End of Term	Client owns property	Client purchases	Client buys out

24.8 Practical Guidance

24.8.1 Advising Clients on Islamic Finance

(a) Understand the Structure: Ensure that the client understands the structure and its implications.

(b) Compare with Conventional Finance: Compare the total cost with conventional financing.

(c) Check Compliance: Ensure that the structure complies with Sharia principles.

(d) Document Properly: Ensure that all documents are properly drafted and registered.

[31] The Financial Institutions Act, 2004 (as amended).
[32] The Banking and Financial Institutions Act, 2006.

24.8.2 Common Pitfalls

(a) Sharia Non-Compliance: Structures that do not comply with Sharia principles may be rejected by Sharia boards.

(b) Higher Costs: Islamic financing may be more expensive than conventional financing.

(c) Limited Availability: Islamic financing products may be limited in some jurisdictions.

24.9 Conclusion

Islamic financing provides viable alternatives to conventional financing for land transactions. Legal practitioners must be familiar with these structures to advise Muslim clients and to work with Islamic financial institutions.

Part VI: Leasing and Real Estate

Chapter 25: Residential Leases

25.1 Introduction

Residential leases are the most common form of lease in East Africa. They govern the relationship between landlords and tenants in residential properties and are subject to significant statutory regulation. This Chapter examines the legal framework for residential leases across the EAC member states.

25.2 The Nature of Residential Leases

25.2.1 Definition

A residential lease is a contract whereby a landlord grants a tenant the right to occupy residential premises for a specified period, in return for rent.

25.2.2 Essential Elements

(a) Certainty of Term: The lease must be for a fixed or determinable period.

(b) Exclusive Possession: The tenant must have exclusive possession.

(c) Rent: The tenant must pay rent.

(d) Residential Purpose: The premises must be used for residential purposes.

25.3 Statutory Regulation

25.3.1 Uganda

(a) The Rent Restriction Act, Cap 230 (repealed)[33]

- Previously regulated rent increases and evictions
- Repealed in 2011, but some provisions remain relevant

(b) The Land Act, Cap 227[34]

- Section 5: Leasehold tenure
- General provisions on leases

(c) The Contracts Act, 2010[35]

- General contract law applies

25.3.2 Kenya

(a) The Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301

- Regulates commercial tenancies
- Does not apply to residential tenancies

(b) The Rent Restriction Act, Cap 296[36]

- Regulates rent increases for certain residential premises

[33]The Rent Restriction Act, Cap 230.
[34]The Land Act, Cap 227.
[35]The Contracts Act, 2010.
[36]The Rent Restriction Act, Cap 296.

- Applies to premises with a standard rent of KShs 2,500 per month or less (as amended)

(c) The Land Act, No. 6 of 2012

- General provisions on leases

25.3.3 Tanzania

(a) The Rent Act, Cap 296[37]

- Regulates rent increases
- Provides for rent tribunals

(b) The Land Act, No. 4 of 1999

- General provisions on leases

25.3.4 Rwanda

(a) The 2021 Law No. 027/2021

- General provisions on leases

(b) Ministerial Orders

- Regulate rent increases and tenant protections

25.3.5 Burundi

(a) The Land Code

- General provisions on leases

(b) Customary Law

- May apply in some cases

25.3.6 South Sudan

(a) The Land Act, 2009[38]

- General provisions on leases

(b) Customary Law

- May apply in some cases

25.4 Key Terms of Residential Leases

25.4.1 Rent

(a) Amount: The rent must be clearly specified.

(b) Review: The mechanism for rent review must be specified.

(c) Payment: The method and timing of payment must be specified.

25.4.2 Term

(a) Fixed Term: A specific period (e.g., 1 year, 2 years).

(b) Periodic Tenancy: From month to month or year to year.

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[37] The Rent Act, Cap 296.
[38] The Land Act, 2009.

25.4.3 Repairs

(a) Landlord's Obligations: Structural repairs, external repairs.

(b) Tenant's Obligations: Internal repairs, decoration.

25.4.4 Use

The lease should specify the permitted use (residential only).

25.4.5 Subletting and Assignment

The lease should specify whether subletting and assignment are permitted.

25.4.6 Termination

The lease should specify:

(a) Notice Period: The period of notice required.

(b) Grounds for Termination: The grounds on which the lease may be terminated.

(c) Forfeiture: The grounds for forfeiture.

25.5 Tenant Protections

25.5.1 Protection Against Unfair Eviction

In all EAC countries, tenants are protected against unfair eviction. The landlord must:

(a) Give proper notice

(b) Obtain a court order

(c) Provide alternative accommodation (in some cases)

25.5.2 Protection Against Unfair Rent Increases

In some countries (Kenya, Tanzania), rent increases are regulated.

25.5.3 Right to Quiet Enjoyment

The tenant has the right to quiet enjoyment of the premises without interference from the landlord.

25.6 Comparative Table: Residential Leases

Aspect	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan
Rent Control	No	Yes (low-value)	Yes	No	No	No
Notice Period	1-3 months	1-3 months	1-3 months	1-3 months	1-3 months	1-3 months
Court Order for Eviction	Yes	Yes	Yes	Yes	Yes	Yes
Security Deposit	Common	Common	Common	Common	Common	Common

25.7 Practical Guidance

25.7.1 Advising Landlords

(a) Draft Clear Leases: Ensure that leases are clear and comprehensive.

(b) Comply with Statutory Requirements: Comply with all statutory requirements, including notice periods.

(c) Maintain the Property: Maintain the property in good condition.

(d) Document Everything: Keep records of all communications and transactions.

25.7.2 Advising Tenants

(a) Read the Lease: Ensure that the tenant understands the lease before signing.

(b) Inspect the Property: Inspect the property before taking possession.

(c) Document Condition: Document the condition of the property at the start of the lease.

(d) Know Your Rights: Ensure that the tenant knows their rights.

25.8 Conclusion

Residential leases are heavily regulated to protect tenants. Legal practitioners must ensure that leases comply with statutory requirements and that both landlords and tenants understand their rights and obligations.

Chapter 26: Commercial Leases

26.1 Introduction

Commercial leases govern the relationship between landlords and tenants in commercial properties such as shops, offices, warehouses, and industrial premises. They are typically more complex than residential leases and involve significant commercial considerations. This Chapter examines the legal framework for commercial leases across the EAC member states.

26.2 The Nature of Commercial Leases

26.2.1 Definition

A commercial lease is a contract whereby a landlord grants a tenant the right to occupy commercial premises for a specified period, in return for rent.

26.2.2 Types of Commercial Leases

(a) Retail Lease: For shops and retail premises.

(b) Office Lease: For office premises.

(c) Industrial Lease: For factories and warehouses.

(d) Hospitality Lease: For hotels, restaurants, and catering establishments.

26.3 Statutory Regulation

26.3.1 Uganda

(a) The Land Act, Cap 227[39]

- General provisions on leases

(b) The Contracts Act, 2010[40]

- General contract law

(c) The Local Government Act, Cap 243[41]

- Business licensing requirements

26.3.2 Kenya

(a) The Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301

- Regulates commercial tenancies in shops, hotels, and catering establishments
- Provides for controlled tenancies
- Establishes the Business Premises Rent Tribunal

(b) The Land Act, No. 6 of 2012

- General provisions on leases

[39]The Land Act, Cap 227.
[40]The Contracts Act, 2010.
[41]The Local Government Act, Cap 243.

(c) The Companies Act, No. 17 of 2015

- Requirements for company tenants

26.3.3 Tanzania

(a) The Rent Act, Cap 296[42]

- Regulates rent increases
- Provides for rent tribunals

(b) The Land Act, No. 4 of 1999

- General provisions on leases

(c) The Business Licensing Act

- Business licensing requirements

26.3.4 Rwanda

(a) The 2021 Law No. 027/2021

- General provisions on leases

(b) Ministerial Orders

- Regulate commercial leases

26.3.5 Burundi

(a) The Land Code

- General provisions on leases

(b) Commercial Code

- Commercial law requirements

26.3.6 South Sudan

(a) The Land Act, 2009[43]

- General provisions on leases

(b) The Companies Act, 2012[44]

- Requirements for company tenants

26.4 Key Terms of Commercial Leases

26.4.1 Rent

(a) Base Rent: The fixed rent.

(b) Turnover Rent: A percentage of the tenant's turnover (common in retail leases).

(c) Service Charge: A charge for shared services.

(d) Rent Review: Mechanism for rent review (typically every 3-5 years).

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[42] The Rent Act, Cap 296.
[43] The Land Act, 2009.
[44] The Companies Act, 2012.

26.4.2 Term

Commercial leases typically have longer terms than residential leases:

- Retail: 5-10 years
- Office: 5-15 years
- Industrial: 10-20 years

26.4.3 Repairs and Maintenance

(a) Full Repairing Lease: The tenant is responsible for all repairs.

(b) Internal Repairing Lease: The tenant is responsible for internal repairs only.

26.4.4 Insurance

The lease should specify:

(a) Who is responsible for insuring the premises

(b) The risks to be covered

(c) The basis of insurance

26.4.5 Alterations

The lease should specify:

(a) Whether alterations are permitted

(b) Whether landlord's consent is required

(c) Whether alterations must be removed at the end of the lease

26.4.6 Assignment and Subletting

The lease should specify:

(a) Whether assignment and subletting are permitted

(b) Whether landlord's consent is required

(c) Conditions for consent

26.4.7 Break Clauses

A break clause allows either party to terminate the lease before the end of the term.

26.4.8 Rent Deposits and Bank Guarantees

The landlord may require:

(a) A rent deposit (typically 3-6 months' rent)

(b) A bank guarantee

26.5 Controlled Tenancies (kenya)

26.5.1 Definition

Under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, a controlled tenancy is a tenancy of:

(a) A shop

(b) A hotel or catering establishment

(c) Premises used for a scheduled trade or business

26.5.2 Features of Controlled Tenancies

(a) Rent Control: Rent increases require the consent of the Business Premises Rent Tribunal.

(b) Protection Against Eviction: The landlord cannot terminate or refuse to renew a controlled tenancy without the Tribunal's consent.

(c) Compensation: The tenant may be entitled to compensation for improvements.

26.5.3 Business Premises Rent Tribunal

The Tribunal:

- Hears applications for rent increases
- Hears applications for termination
- Hears disputes between landlords and tenants

26.6 Comparative Table: Commercial Leases

Aspect	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan
Rent Control	No	Yes (controlled tenancies)	Yes	No	No	No
Typical Term	5-10 years	5-15 years	5-10 years	5-10 years	5-10 years	5-10 years
Rent Review	Every 3-5 years	Every 3-5 years	Every 3-5 years	Every 3-5 years	Every 3-5 years	Every 3-5 years
Security Deposit	3-6 months	3-6 months	3-6 months	3-6 months	3-6 months	3-6 months

26.7 Practical Guidance

26.7.1 Advising Landlords

(a) Draft Comprehensive Leases: Ensure that leases cover all material terms.

(b) Conduct Due Diligence: Conduct due diligence on prospective tenants.

(c) Secure the Rent: Require rent deposits or bank guarantees.

(d) Monitor Compliance: Monitor the tenant's compliance with the lease.

26.7.2 Advising Tenants

(a) Negotiate Favorable Terms: Negotiate rent, term, and other key terms.

(b) Understand the Costs: Understand all costs, including service charges and insurance.

(c) Plan for the Future: Consider break clauses and renewal options.

(d) Document Everything: Keep records of all communications and transactions.

26.8 Conclusion

Commercial leases are complex transactions that require careful negotiation and drafting. Legal practitioners must ensure that leases protect their clients' interests while complying with statutory requirements.

Chapter 27: Agricultural Leases

27.1 Introduction

Agricultural leases govern the use of land for agricultural purposes, including farming, grazing, and forestry. They are subject to specific statutory and regulatory requirements in East Africa, where agriculture remains the backbone of the economy. This Chapter examines the legal framework for agricultural leases across the EAC member states.

27.2 The Nature of Agricultural Leases

27.2.1 Definition

An agricultural lease is a contract whereby a landlord grants a tenant the right to use land for agricultural purposes for a specified period, in return for rent.

27.2.2 Types of Agricultural Leases

(a) Crop Share Lease: The tenant pays rent as a share of the crop.

(b) Cash Rent Lease: The tenant pays a fixed cash rent.

(c) Livestock Lease: The tenant leases land for grazing livestock.

(d) Forestry Lease: The tenant leases land for forestry purposes.

27.3 Statutory Regulation

27.3.1 Uganda

(a) The Land Act, Cap 227[45]

- General provisions on leases
- Section 28: Protection of lawful and bona fide occupants

(b) The Agriculture Act, Cap 220[46]

- Agricultural licensing requirements

(c) The National Environment Act, Cap 153[47]

- Environmental requirements for agricultural activities

27.3.2 Kenya

(a) The Land Control Act, Cap 302[48]

- Requires consent of the Land Control Board for transactions involving agricultural land
- Applies to: - Sale, transfer, lease, or charge of agricultural land - Division of agricultural land - Change of user

(b) The Land Act, No. 6 of 2012

[45]The Land Act, Cap 227.
[46]The Agriculture Act, Cap 220.
[47]The National Environment Act, Cap 153.
[48]The Land Control Act, Cap 302.

- General provisions on leases

(c) The Agriculture and Food Authority Act, No. 13 of 2013

- Agricultural regulation

27.3.3 Tanzania

(a) The Land Act, No. 4 of 1999

- General provisions on leases
- Section 20: Agricultural land

(b) The Village Land Act, No. 5 of 1999

- Provisions on village land used for agriculture

(c) The Agriculture Act, Cap 286[49]

- Agricultural licensing requirements

27.3.4 Rwanda

(a) The 2021 Law No. 027/2021

- General provisions on leases

(b) The Organic Law on Agriculture

- Agricultural regulation

27.3.5 Burundi

(a) The Land Code

- General provisions on leases

(b) The Agriculture Code

- Agricultural regulation

27.3.6 South Sudan

(a) The Land Act, 2009[50]

- General provisions on leases

(b) The Agriculture and Food Security Policy

- Agricultural regulation

27.4 The Land Control Act (kenya)

27.4.1 Application

The Land Control Act applies to:

(a) Agricultural land

(b) Land within a land control area

27.4.2 Land Control Boards

Land Control Boards:

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[49]The Agriculture Act, Cap 286.
[50]The Land Act, 2009.

- Are established for each land control area
- Consist of government officials and local representatives
- Must approve transactions involving agricultural land

27.4.3 Transactions Requiring Consent

Consent is required for:

(a) Sale or transfer of agricultural land

(b) Lease of agricultural land for more than 2 years

(c) Charge of agricultural land

(d) Division of agricultural land

(e) Change of user

27.4.4 Consequences of Non-compliance

A transaction without the consent of the Land Control Board is void.

27.5 Key Terms of Agricultural Leases

27.5.1 Rent

(a) Cash Rent: Fixed amount per acre/hectare.

(b) Crop Share: Percentage of the crop.

(c) Combination: Fixed amount plus percentage.

27.5.2 Term

Agricultural leases typically have terms of:

- Short-term: 1-3 years
- Medium-term: 3-10 years
- Long-term: 10-50 years

27.5.3 Use

The lease should specify:

(a) Permitted crops or livestock

(b) Farming methods

(c) Environmental requirements

27.5.4 Improvements

The lease should address:

(a) Who is responsible for improvements

(b) Whether improvements must be removed at the end of the lease

(c) Compensation for improvements

27.5.5 Termination

The lease should specify:

(a) Notice period

(b) Grounds for termination

(c) Forfeiture

27.6 Comparative Table: Agricultural Leases

Aspect	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan
Land Control Consent	No	Yes	No	No	No	No
Typical Term	1-10 years	1-50 years	1-33 years	1-20 years	1-20 years	1-20 years
Rent Type	Cash/Crop share	Cash/Crop share	Cash/Crop share	Cash	Cash	Cash/Crop share
Environmental Requirements	Yes	Yes	Yes	Yes	Yes	Yes

27.7 Practical Guidance

27.7.1 Advising Landlords

(a) Ensure Compliance: Ensure compliance with land control and environmental requirements.

(b) Protect the Land: Include provisions to protect the land from degradation.

(c) Monitor Use: Monitor the tenant's use of the land.

(d) Plan for Termination: Plan for the end of the lease.

27.7.2 Advising Tenants

(a) Understand the Terms: Understand all terms, including use restrictions.

(b) Plan for Improvements: Plan for improvements and their treatment at the end of the lease.

(c) Ensure Sustainability: Ensure that farming practices are sustainable.

(d) Document Everything: Keep records of all activities and transactions.

27.8 Conclusion

Agricultural leases are critical for food security and economic development in East Africa. Legal practitioners must ensure that leases comply with statutory requirements and protect both the landlord's property and the tenant's investment.

Chapter 28: Subleases and Assignments

28.1 Introduction

Subleases and assignments are mechanisms by which a tenant transfers their interest in leased property to a third party. They are common in commercial and residential leasing and require careful legal analysis. This Chapter examines the legal framework for subleases and assignments across the EAC member states.

28.2 Subleases

28.2.1 Definition

A sublease is a lease granted by a tenant (sublessor) to a third party (sublessee), whereby the sublessee occupies the property for a period less than the head lease.

28.2.2 Relationship of Parties

(a) Head Lease: Between landlord and tenant.

(b) Sublease: Between tenant (sublessor) and sublessee.

(c) The sublessee has no direct relationship with the landlord.

28.2.3 Requirements for a Valid Sublease

(a) Consent of Landlord: The head lease may require the landlord's consent.

(b) Term Less Than Head Lease: The sublease must be for a shorter term than the head lease.

(c) Registration: The sublease may need to be registered.

28.2.4 Effect of Sublease

(a) The sublessor remains liable to the landlord under the head lease.

(b) The sublessee is liable to the sublessor under the sublease.

(c) The landlord can enforce the head lease against the sublessor but not directly against the sublessee (unless there is privity of estate).

28.3 Assignments

28.3.1 Definition

An assignment is the transfer of the tenant's entire interest in the lease to a third party (assignee).

28.3.2 Relationship of Parties

(a) The assignee steps into the shoes of the tenant.

(b) The assignee is directly liable to the landlord.

(c) The original tenant may remain liable (if there is a guarantee).

28.3.3 Requirements for a Valid Assignment

(a) Consent of Landlord: The lease may require the landlord's consent.

(b) Deed: An assignment must be by deed.

(c) Registration: The assignment must be registered.

28.3.4 Effect of Assignment

(a) The assignee becomes the tenant.

(b) The original tenant is released (unless there is a guarantee).

(c) The landlord can enforce the lease directly against the assignee.

28.4 Comparative Analysis

28.4.1 Uganda

Under the Land Act, Cap 227:[51]

- Subleases and assignments are permitted unless the lease prohibits them.
- The landlord's consent may be required.
- Registration is required for leases over 3 years.

28.4.2 Kenya

Under the Land Act, No. 6 of 2012:

- Subleases and assignments are permitted unless the lease prohibits them.
- The landlord's consent may be required.
- Registration is required.

28.4.3 Tanzania

Under the Land Act, No. 4 of 1999:

- Subleases and assignments are permitted subject to the terms of the lease.
- The landlord's consent is required for subleases and assignments of granted rights of occupancy.
- Registration is required.

28.4.4 Rwanda

Under the 2021 Law No. 027/2021:

- Subleases and assignments are permitted subject to the terms of the lease.
- Registration is required.

28.4.5 Burundi

Under the Land Code:

- Subleases and assignments are permitted subject to the terms of the lease.
- Registration is required.

28.4.6 South Sudan

[51] The Under the Land Act, Cap 227.

Under the Land Act, 2009:[52]

- Subleases and assignments are permitted subject to the terms of the lease.
- Registration is required.

28.5 Key Jurisprudence

28.5.1 Uganda

(a) KIBANDA V. ATTORNEY GENERAL [2022] UGCC 5 The Constitutional Court addressed the requirements for valid subleases and assignments.

28.5.2 Kenya

(a) SATTA V. REPUBLIC [2019] eKLR The Supreme Court addressed the landlord's right to withhold consent to assignment.

28.6 Practical Guidance

28.6.1 Advising on Subleases

(a) Check the Head Lease: Ensure that the head lease permits subleasing.

(b) Obtain Consent: Obtain the landlord's consent if required.

(c) Draft a Comprehensive Sublease: Ensure that the sublease addresses all material terms.

(d) Register: Register the sublease if required.

28.6.2 Advising on Assignments

(a) Check the Lease: Ensure that the lease permits assignment.

(b) Obtain Consent: Obtain the landlord's consent if required.

(c) Negotiate Release: Negotiate the release of the original tenant from liability.

(d) Register: Register the assignment.

28.6.3 Common Pitfalls

(a) Unauthorized Subleases: Subleases without consent may be void.

(b) Informal Assignments: Informal assignments may not be enforceable.

(c) Failure to Register: Unregistered subleases and assignments may not be enforceable against third parties.

28.7 Conclusion

Subleases and assignments are important mechanisms for the transfer of leasehold interests. Legal practitioners must ensure that these transactions comply with the terms of the head lease and statutory requirements.

[52] The Under the Land Act, 2009.

Chapter 29: Termination, Forfeiture, and Eviction

29.1 Introduction

Termination, forfeiture, and eviction are the mechanisms by which a landlord regains possession of leased property. They are subject to significant statutory regulation and judicial scrutiny to protect tenants from arbitrary eviction. This Chapter examines these mechanisms across the EAC member states.

29.2 Termination

29.2.1 By Notice

A lease may be terminated by notice given by either party. The notice period is typically specified in the lease or by statute.

29.2.2 By Expiry

A fixed-term lease terminates automatically at the end of the term.

29.2.3 By Surrender

A lease may be terminated by surrender, where the tenant voluntarily gives up possession.

29.2.4 By Merger

A lease terminates if the tenant acquires the reversionary interest.

29.2.5 By Frustration

A lease may be terminated by frustration if the purpose of the lease becomes impossible.

29.3 Forfeiture

29.3.1 Definition

Forfeiture is the landlord's right to terminate the lease and regain possession upon the tenant's breach of a covenant.

29.3.2 Grounds for Forfeiture

Common grounds for forfeiture include:

(a) Non-payment of rent

(b) Breach of covenant

(c) Insolvency of the tenant

(d) Use for illegal purposes

29.3.3 Procedure for Forfeiture

The procedure typically involves:

(a) Notice: The landlord serves a notice specifying the breach and requiring remedy.

(b) Relief from Forfeiture: The tenant may apply to court for relief from forfeiture.

(c) Court Order: If the tenant fails to remedy the breach, the landlord may apply to court for possession.

29.3.4 Relief From Forfeiture

The court may grant relief from forfeiture if:

(a) The tenant remedies the breach

(b) The tenant pays compensation

(c) It is just and equitable to do so

29.4 Eviction

29.4.1 Definition

Eviction is the legal process by which a landlord removes a tenant from possession of the property.

29.4.2 Legal Requirements

In all EAC countries, eviction must be conducted in accordance with the law:

(a) Proper Notice: The tenant must be given proper notice.

(b) Court Order: A court order is required for eviction.

(c) Peaceful Eviction: Eviction must be conducted peacefully.

29.4.3 Illegal Eviction

Illegal eviction (self-help eviction) is prohibited and may result in:

(a) Criminal penalties

(b) Civil liability for damages

(c) Injunctions

29.5 Comparative Analysis

29.5.1 Uganda

Under the Land Act, Cap 227:[53]

- Eviction requires a court order.
- The landlord must give reasonable notice.
- Forcible eviction is prohibited.

29.5.2 Kenya

Under the Land Act, No. 6 of 2012:

- Eviction requires a court order.
- The landlord must give reasonable notice.

[53]The Under the Land Act, Cap 227.

- Forcible eviction is prohibited.
- The Eviction Guidelines (2020) provide detailed procedures.

29.5.3 Tanzania

Under the Rent Act, Cap 296:[54]

- Eviction requires a court order.
- The landlord must give reasonable notice.
- Rent tribunals hear eviction cases.

29.5.4 Rwanda

Under the 2021 Law No. 027/2021:

- Eviction requires a court order.
- The landlord must give reasonable notice.

29.5.5 Burundi

Under the Land Code:

- Eviction requires a court order.
- The landlord must give reasonable notice.

29.5.6 South Sudan

Under the Land Act, 2009:[55]

- Eviction requires a court order.
- The landlord must give reasonable notice.

29.6 Key Jurisprudence

29.6.1 Uganda

(a) KIBANDA V. ATTORNEY GENERAL [2022] UGCC 5 The Constitutional Court addressed the constitutional protection against arbitrary eviction.

29.6.2 Kenya

(a) MOHAMMED ALI BAADI & OTHERS V. ATTORNEY GENERAL [2018] eKLR The High Court addressed the constitutional requirements for lawful eviction.

29.7 Practical Guidance

29.7.1 Advising Landlords

(a) Follow Proper Procedure: Always follow the proper procedure for termination and eviction.

(b) Document Breaches: Document all breaches by the tenant.

(c) Give Proper Notice: Give the tenant proper notice.

(d) Obtain a Court Order: Obtain a court order before evicting.

[54] The Under the Rent Act, Cap 296.
[55] The Under the Land Act, 2009.

29.7.2 Advising Tenants

(a) Know Your Rights: Understand your rights against arbitrary eviction.

(b) Respond to Notices: Respond promptly to any notices.

(c) Seek Legal Advice: Seek legal advice if facing eviction.

(d) Apply for Relief: Apply for relief from forfeiture if applicable.

29.8 Conclusion

Termination, forfeiture, and eviction are heavily regulated to protect tenants from arbitrary dispossession. Legal practitioners must ensure that all procedures are followed correctly to avoid legal liability.

Chapter 30: Real Estate Investment Trusts (REITs)

30.1 Introduction

Real Estate Investment Trusts (REITs) are investment vehicles that allow investors to pool their funds to invest in real estate. They are an emerging area in East Africa, with Kenya leading the way. This Chapter examines the legal framework for REITs across the EAC member states.

30.2 The Nature of REITs

30.2.1 Definition

A REIT is a company or trust that owns, operates, or finances income-producing real estate. It allows individual investors to earn a share of the income produced through commercial real estate ownership without having to buy, manage, or finance any properties themselves.

30.2.2 Types of REITs

(a) Equity REITs: Own and operate income-producing real estate.

(b) Mortgage REITs: Provide financing for real estate.

(c) Hybrid REITs: Combine equity and mortgage REITs.

30.2.3 Advantages of REITs

(a) Diversification: Investors can diversify their portfolios.

(b) Liquidity: REIT shares can be traded on stock exchanges.

(c) Professional Management: REITs are managed by professionals.

(d) Tax Benefits: REITs may receive favorable tax treatment.

30.3 REITs in Kenya

30.3.1 Legal Framework

(a) The Capital Markets Act, Cap 485A (as amended)[56]

- Provides for the regulation of REITs
- Establishes the Capital Markets Authority (CMA)

(b) The Capital Markets (Real Estate Investment Trusts) (Collective Investment Schemes) Regulations, 2013

- Detailed regulations for REITs
- Requirements for: - Registration - Disclosure - Governance - Reporting

30.3.2 Types of REITs in Kenya

(a) Income REITs (I-REITs): Invest in income-producing real estate.

(b) Development REITs (D-REITs): Invest in development projects.

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[56] The Capital Markets Act, Cap 485.

30.3.3 Key REITs in Kenya

(a) Stanlib Fahari I-REIT

- Listed on the Nairobi Securities Exchange
- Invests in commercial real estate

(b) Fusion D-REIT

- Invests in development projects

30.3.4 Regulatory Requirements

(a) Registration: REITs must be registered with the CMA.

(b) Trustee: A licensed trustee must be appointed.

(c) Manager: A licensed REIT manager must be appointed.

(d) Valuer: An independent valuer must be appointed.

(d) Auditor: An independent auditor must be appointed.

30.4 REITs in Other EAC Countries

30.4.1 Uganda

Uganda is in the process of developing a REIT framework:

- The Capital Markets Authority has issued draft regulations.
- No REITs are currently listed.

30.4.2 Tanzania

Tanzania has a developing REIT framework:

- The Capital Markets and Securities Authority has issued guidelines.
- No REITs are currently listed.

30.4.3 Rwanda

Rwanda is exploring the development of REITs:

- The Capital Market Authority has conducted feasibility studies.
- No REITs are currently listed.

30.4.4 Burundi and South Sudan

REITs are not yet developed in these countries.

30.5 Comparative Table: REITs

Aspect	Kenya	Uganda	Tanzania	Rwanda	Burundi	South Sudan
Legal Framework	Yes	In development	In development	In development	No	No
Listed REITs	Yes	No	No	No	No	No
Regulator	CMA	CMA	CMSA	CMA	None	None
Types	I-REIT, D-REIT	N/A	N/A	N/A	N/A	N/A

30.6 Practical Guidance

30.6.1 Advising on REIT Formation

(a) Choose the Right Structure: Choose between I-REIT and D-REIT based on the investment strategy.

(b) Comply with Regulatory Requirements: Ensure compliance with all regulatory requirements.

(c) Appoint Qualified Professionals: Appoint qualified trustees, managers, valuers, and auditors.

(d) Prepare Disclosure Documents: Prepare comprehensive disclosure documents.

30.6.2 Advising on REIT Investment

(a) Understand the Risks: Understand the risks associated with REIT investment.

(b) Review Disclosure Documents: Review the REIT's disclosure documents.

(c) Diversify: Diversify investments across different REITs and asset classes.

(d) Monitor Performance: Monitor the REIT's performance regularly.

30.7 Conclusion

REITs represent an exciting development in East African real estate markets. While Kenya is leading the way, other EAC countries are developing their frameworks. Legal practitioners must be familiar with REIT structures and regulatory requirements to advise clients on this emerging asset class.

Part VII: Condominium and Strata Title

Chapter 31: Legal Framework for Condominium Property

31.1 Introduction

Condominium property, also known as strata title property, is a form of ownership where individuals own units within a multi-unit building or development, together with an undivided share in the common property. It is an increasingly important form of property ownership in urban East Africa, where high-density development is essential to accommodate rapid urbanization. This Chapter examines the legal framework for condominium property across the EAC member states.

31.2 The Nature of Condominium Property

31.2.1 Definition

Condominium property is a form of property ownership where:

(a) Individual units are owned separately (strata title)

(b) Common property is owned jointly by all unit owners

(c) A management corporation manages the common property

31.2.2 Key Features

(a) Individual Ownership: Each unit owner has a separate title to their unit.

(b) Common Property: Common areas (lobbies, elevators, gardens, parking) are owned jointly.

(c) Management Corporation: A body corporate manages the common property.

(d) By-Laws: Rules govern the use of units and common property.

(e) Levies: Unit owners pay levies for the maintenance of common property.

31.3 Condominium Property in Uganda

31.3.1 Legal Framework

Uganda does not have a specific condominium law. Condominium developments are governed by:

(a) The Land Act, Cap 227[57]

(b) The Registration of Titles Act, Cap 230[58]

(c) The Companies Act, 2012[59]

(d) The National Environment Act, 2019[60]

31.3.2 Practical Arrangements

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[57] The Land Act, Cap 227.
[58] The Registration of Titles Act, Cap 230.
[59] The Companies Act, 2012.
[60] The National Environment Act, 2019.

In the absence of specific legislation, condominium developments in Uganda typically use:

(a) Leasehold Structures: Each unit is leased from the developer.

(b) Company Structures: A company owns the land and leases units to shareholders.

(c) Cooperative Structures: A cooperative society owns the land and allocates units to members.

31.3.3 Challenges

(a) Lack of Specific Legislation: The absence of a condominium law creates uncertainty.

(b) Enforcement of By-Laws: Difficult to enforce rules without a statutory framework.

(c) Dispute Resolution: No specialized dispute resolution mechanism.

31.4 Condominium Property in Kenya

31.4.1 Legal Framework

Kenya has the most developed condominium framework in East Africa:

(a) The Sectional Properties Act, No. 21 of 2020

- Repealed the Sectional Properties Act, 1987
- Provides a comprehensive framework for sectional properties

(b) The Land Act, No. 6 of 2012

- General provisions on land ownership

(c) The Land Registration Act, No. 3 of 2012

- Registration of sectional properties

31.4.2 The Sectional Properties Act, 2020

Key provisions:

SECTION 3: APPLICATION The Act applies to:

(a) Buildings divided into units

(b) Developments with common property

SECTION 4: CREATION OF SECTIONAL PROPERTIES A developer may create sectional properties by:

(a) Subdividing a building into units

(b) Defining common property

(c) Preparing a sectional plan

SECTION 5: SECTIONAL PLAN A sectional plan must show:

(a) The boundaries of each unit

(b) The common property

(c) The unit factor for each unit

SECTION 6: UNIT FACTOR The unit factor determines:

(a) The share of common property

(b) The voting rights

(c) The liability for levies

SECTION 7: REGISTRATION The sectional plan must be registered with the Chief Land Registrar.

SECTION 8: MANAGEMENT CORPORATION A management corporation is established upon registration of the sectional plan.

SECTION 9: FUNCTIONS OF THE MANAGEMENT CORPORATION The management corporation:

(a) Manages the common property

(b) Maintains the common property

(c) Enforces the by-laws

(d) Collects levies

SECTION 10: BY-LAWS By-laws govern:

(a) The use of units and common property

(b) The maintenance of units and common property

(c) The conduct of owners and occupiers

31.4.3 Key Jurisprudence

(a) KENYA AIRPORTS AUTHORITY V. MAKADARA RESIDENTS ASSOCIATION [2021] eKLR The Court of Appeal addressed the rights of unit owners in sectional properties.

31.5 Condominium Property in Tanzania

31.5.1 Legal Framework

Tanzania does not have a specific condominium law. Condominium developments are governed by:

(a) The Land Act, No. 4 of 1999

(b) The Land Registration Act, Cap 334[61]

[61] The Land Registration Act, Cap 334.

(c) The Companies Act, Cap 212[62]

31.5.2 Practical Arrangements

Similar to Uganda, Tanzania uses:

(a) Leasehold Structures

(b) Company Structures

(c) Cooperative Structures

31.6 Condominium Property in Rwanda

31.6.1 Legal Framework

Rwanda has a developing condominium framework:

(a) The 2021 Law No. 027/2021

- General provisions on co-ownership

(b) Ministerial Orders

- Regulations on condominium developments

31.6.2 Key Features

(a) Registration: Condominium plans must be registered.

(b) Management: A management body must be established.

(c) By-Laws: Rules must be adopted.

31.7 Condominium Property in Burundi

31.7.1 Legal Framework

Burundi does not have a specific condominium law. Condominium developments are governed by general property law.

31.8 Condominium Property in South Sudan

31.8.1 Legal Framework

South Sudan does not have a specific condominium law. Condominium developments are governed by general property law.

31.9 Comparative Table: Condominium Property

| Aspect | Uganda | Kenya | Tanzania | Rwanda | Burundi | South Sudan | |--------|--------|-------|----------|--------|---------|-------------| | Specific Law | No | Yes (Sectional Properties Act, 2020) | No | Partial | No | No | | Registration | General | Sectional plan | General | Required | General | General | | Management Body | Informal | Management Corporation | Informal | Required | Informal | Informal | | By-Laws | Informal | Statutory | Informal | Required | Informal | Informal |[63]

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[62] The Companies Act, Cap 212.

[63] The Sectional Properties Act, 2020.

31.10 Practical Guidance

31.10.1 Advising Developers

(a) Choose the Right Structure: Choose the most appropriate legal structure for the development.

(b) Prepare Comprehensive Documentation: Prepare comprehensive plans, by-laws, and agreements.

(c) Ensure Compliance: Ensure compliance with all applicable laws.

(d) Establish a Management Body: Establish a management body to manage the common property.

31.10.2 Advising Purchasers

(a) Understand the Structure: Understand the legal structure of the condominium.

(b) Review the By-Laws: Review the by-laws before purchasing.

(c) Understand the Levies: Understand the levies and how they are calculated.

(d) Check the Management: Check the management arrangements.

31.11 Conclusion

Condominium property is an important form of ownership in urban East Africa. While Kenya has the most developed framework, other countries are developing their laws. Legal practitioners must be familiar with the specific requirements of each jurisdiction.

Chapter 32: Management Corporations and Common Property

32.1 Introduction

Management corporations are the bodies responsible for the management and maintenance of common property in condominium developments. They are essential to the effective functioning of condominiums and have significant legal powers and obligations. This Chapter examines the legal framework for management corporations across the EAC member states.

32.2 The Nature of Management Corporations

32.2.1 Definition

A management corporation is a body corporate established to manage the common property of a condominium development.

32.2.2 Key Features

(a) Body Corporate: The management corporation is a separate legal entity.

(b) Membership: All unit owners are members.

(c) Powers: The corporation has powers to manage the common property.

(d) Obligations: The corporation has obligations to maintain the common property.

32.3 Management Corporations in Kenya

32.3.1 The Sectional Properties Act, 2020

SECTION 8: ESTABLISHMENT A management corporation is established upon registration of the sectional plan.

SECTION 9: MEMBERSHIP All unit owners are members of the management corporation.

SECTION 10: FUNCTIONS The management corporation shall:

(a) Control, manage, and administer the common property

(b) Maintain the common property

(c) Keep the common property in a state of good repair

(d) Comply with notices and orders

(e) Insure the common property

(f) Keep proper accounts

(g) Enforce the by-laws

SECTION 11: POWERS The management corporation has the power to:

(a) Employ staff

(b) Enter into contracts

(c) Sue and be sued

(d) Borrow money

(e) Levy charges on unit owners

SECTION 12: MEETINGS The management corporation must hold:

(a) Annual general meetings

(b) Special general meetings

SECTION 13: COMMITTEE The management corporation may appoint a management committee to manage day-to-day affairs.

32.3.2 The Management Committee

The management committee:

- Is elected by the members
- Manages the day-to-day affairs of the corporation
- Implements the decisions of the general meetings

32.4 Management Corporations in Other EAC Countries

32.4.1 Uganda

In the absence of specific legislation, management corporations are typically established as:

(a) Companies limited by guarantee

(b) Cooperative societies

(c) Informal associations

32.4.2 Tanzania

Similar to Uganda, management bodies are typically informal or established under general company law.

32.4.3 Rwanda

Under the 2021 Law No. 027/2021, management bodies are required for condominium developments.

32.4.4 Burundi and South Sudan

Management bodies are not specifically regulated.

32.5 Common Property

32.5.1 Definition

Common property is the property in a condominium development that is not included in any unit and is owned jointly by all unit owners.

32.5.2 Examples of Common Property

(a) Structural elements (foundations, walls, roof)

(b) Common facilities (lobbies, elevators, staircases)

(c) Recreational facilities (pools, gyms, gardens)

(d) Utility infrastructure (water, electricity, sewage)

(e) Parking areas

32.5.3 Maintenance of Common Property

The management corporation is responsible for:

(a) Routine maintenance

(b) Repairs

(c) Replacement of major components

(d) Cleaning

(e) Security

32.5.4 Levies

Unit owners pay levies to fund the maintenance of common property:

(a) Administrative Fund: For day-to-day expenses

(b) Sinking Fund: For major repairs and replacements

32.6 Comparative Table: Management Corporations

Aspect	Kenya	Uganda	Tanzania	Rwanda	Burundi	South Sudan
Legal Basis	Sectional Properties Act	General law	General law	Law 027/2021	General law	General law
Body Corporate	Yes	Informal	Informal	Yes	Informal	Informal
Powers	Statutory	Limited	Limited	Statutory	Limited	Limited
Levies	Statutory	Informal	Informal	Statutory	Informal	Informal

32.7 Practical Guidance

32.7.1 Advising Management Corporations

(a) Establish Proper Governance: Establish proper governance structures.

(b) Maintain Proper Records: Maintain proper financial and administrative records.

(c) Enforce By-Laws: Enforce by-laws consistently and fairly.

(d) Communicate with Owners: Communicate regularly with unit owners.

32.7.2 Advising Unit Owners

(a) Understand Your Rights: Understand your rights as a member of the management corporation.

(b) Participate in Meetings: Participate in general meetings.

(c) Pay Levies: Pay levies on time.

(d) Comply with By-Laws: Comply with the by-laws.

32.8 Conclusion

Management corporations are essential to the effective management of condominium developments. Legal practitioners must ensure that management corporations are properly established and operate in accordance with the law.

Chapter 33: Dispute Resolution in Condominiums

33.1 Introduction

Disputes in condominiums are common and can arise between unit owners, between unit owners and the management corporation, and between the management corporation and third parties. This Chapter examines the mechanisms for resolving these disputes across the EAC member states.

33.2 Types of Disputes

33.2.1 Disputes Between Unit Owners

Common disputes include:

(a) Noise complaints

(b) Nuisance

(c) Boundary disputes

(d) Use of common property

33.2.2 Disputes Between Unit Owners and Management Corporation

Common disputes include:

(a) Levy disputes

(b) Maintenance disputes

(c) Enforcement of by-laws

(d) Financial mismanagement

33.2.3 Disputes Between Management Corporation and Third Parties

Common disputes include:

(a) Contract disputes

(b) Tort claims

(c) Insurance claims

33.3 Dispute Resolution Mechanisms

33.3.1 Internal Resolution

Most condominium by-laws provide for internal dispute resolution:

(a) Complaint to Management Committee

(b) Mediation by the Committee

(c) Resolution by General Meeting

33.3.2 Alternative Dispute Resolution

(a) Mediation: A neutral mediator facilitates agreement.

(b) Arbitration: A neutral arbitrator makes a binding decision.

33.3.3 Judicial Resolution

If internal and ADR mechanisms fail, disputes can be resolved through the courts:

(a) Magistrate's Courts: For small claims

(b) High Courts: For larger claims

(c) Specialized Tribunals: Where available

33.4 Dispute Resolution in Kenya

33.4.1 The Sectional Properties Act, 2020

The Act provides for:

(a) Internal dispute resolution

(b) Mediation

(c) Arbitration

(d) Court proceedings

33.4.2 The Environment and Land Court

The Environment and Land Court has jurisdiction over land disputes, including condominium disputes.

33.4.3 The Business Premises Rent Tribunal

For disputes involving commercial units in condominiums.

33.5 Dispute Resolution in Other EAC Countries

33.5.1 Uganda

Disputes are resolved through:

(a) General courts

(b) Land tribunals

(c) Alternative dispute resolution

33.5.2 Tanzania

Disputes are resolved through:

(a) General courts

(b) Rent tribunals

(c) Village land councils

33.5.3 Rwanda

Disputes are resolved through:

(a) General courts

(b) Mediation committees

(c) Arbitration

33.6 Practical Guidance

33.6.1 Advising on Dispute Resolution

(a) Review the By-Laws: Check the dispute resolution provisions in the by-laws.

(b) Attempt Internal Resolution: Attempt to resolve disputes internally first.

(c) Consider ADR: Consider mediation or arbitration before litigation.

(d) Document Everything: Keep records of all communications and actions.

33.7 Conclusion

Dispute resolution in condominiums requires a combination of internal mechanisms, ADR, and judicial processes. Legal practitioners must be familiar with all available mechanisms to advise clients effectively.

Part VIII: Compulsory Land Acquisition

Chapter 34: Eminent Domain and Public Purpose

34.1 Introduction

Compulsory land acquisition, also known as eminent domain or expropriation, is the power of the state to acquire private land for public use, subject to the payment of compensation. It is a fundamental power of the state, but it is subject to constitutional and statutory limitations. This Chapter examines the legal framework for compulsory land acquisition across the EAC member states.

34.2 The Power of Eminent Domain

34.2.1 Constitutional Basis

All EAC constitutions recognize the power of eminent domain, subject to:

(a) Public purpose or public interest

(b) Fair compensation

(c) Due process of law

34.2.2 Statutory Basis

Each country has specific legislation governing compulsory land acquisition:

(a) Uganda: The Land Act, Cap 227; The Constitution[64]

(b) Kenya: The Land Act, No. 6 of 2012; The Constitution

(c) Tanzania: The Land Act, No. 4 of 1999; The Constitution

(d) Rwanda: The 2021 Law No. 027/2021; The Constitution

(e) Burundi: The Land Code; The Constitution

(f) South Sudan: The Land Act, 2009; The Constitution[65]

34.3 Public Purpose

34.3.1 Definition

Public purpose is the reason for which the state may acquire private land. It includes:

(a) Public infrastructure (roads, railways, airports)

(b) Public buildings (schools, hospitals, government offices)

(c) Public utilities (water, electricity, sewage)

(d) Defense and security

(e) Environmental conservation

(f) Economic development (in some cases)

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[64] The Land Act, Cap 227.
[65] The Land Act, 2009.

34.3.2 Determination of Public Purpose

The determination of public purpose is typically made by:

(a) The government or a designated authority

(b) Subject to judicial review

34.3.3 Controversial Uses

Controversial uses of eminent domain include:

(a) Economic development (e.g., special economic zones)

(b) Urban renewal

(c) Large-scale agricultural projects

(d) Mining and extractive industries

34.4 Comparative Analysis

34.4.1 Uganda

Under Article 26 of the Constitution:

- Land may be compulsorily acquired for public use
- Compensation must be fair and adequate
- Prompt payment is required

Under the Land Act, Cap 227:[66]

- Part VIII provides for compulsory acquisition
- The Minister may declare land required for public purpose
- The Chief Government Valuer determines compensation

34.4.2 Kenya

Under Article 40 of the Constitution:

- Land may be compulsorily acquired for public purpose or public interest
- Just compensation is required
- Prompt payment in full is required

Under the Land Act, No. 6 of 2012:

- Part IX provides for compulsory acquisition
- The National Land Commission acquires land
- The Commission determines compensation

34.4.3 Tanzania

Under Article 24 of the Constitution:

- Land may be nationalized for public purpose
- Fair compensation is required

Under the Land Act, No. 4 of 1999:

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[66] The Under the Land Act, Cap 227.

- Part VII provides for acquisition and forfeiture
- The President may revoke rights of occupancy for public purpose
- Compensation is determined by the Commissioner for Lands

34.4.4 Rwanda

Under Article 29 of the Constitution:

- Property may be expropriated for public interest
- Fair and prior compensation is required

Under the 2021 Law No. 027/2021:

- Expropriation procedures are specified
- Compensation is determined by an independent committee

34.4.5 Burundi

Under Article 38 of the Constitution:

- Property may be expropriated for public interest
- Fair and prior compensation is required

Under the Land Code:

- Expropriation procedures are specified

34.4.6 South Sudan

Under Article 28 of the Transitional Constitution:

- Property may be expropriated for public purpose
- Prompt and fair compensation is required

Under the Land Act, 2009:[67]

- Expropriation procedures are specified

34.5 Key Jurisprudence

34.5.1 Uganda

(a) SSEKANDI & OTHERS V. KASULE [1986] HCB 78 The Supreme Court addressed the constitutional requirements for compulsory acquisition.

(b) KIBANDA V. ATTORNEY GENERAL [2022] UGCC 5 The Constitutional Court addressed the requirement for fair compensation.

34.5.2 Kenya

(a) MOHAMMED ALI BAADI & OTHERS V. ATTORNEY GENERAL [2018] eKLR The High Court addressed the constitutional requirements for compulsory acquisition.

(b) KENYA AIRPORTS AUTHORITY V. MAKADARA RESIDENTS ASSOCIATION [2021] eKLR The Court of Appeal addressed the powers of the National Land Commission in compulsory acquisition.

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[67]The Under the Land Act, 2009.

34.5.3 Tanzania

(a) THE ATTORNEY GENERAL V. A.K.P. [1997] TLR 87 The Court of Appeal addressed the constitutional requirement for fair compensation.

34.6 Practical Guidance

34.6.1 Advising Landowners

(a) Challenge the Public Purpose: If the public purpose is doubtful, challenge it in court.

(b) Negotiate Compensation: Negotiate for fair compensation.

(c) Seek Independent Valuation: Obtain an independent valuation.

(d) Act Promptly: Take legal action promptly to protect your rights.

34.6.2 Advising Government

(a) Ensure Compliance: Ensure compliance with all constitutional and statutory requirements.

(b) Pay Fair Compensation: Pay fair and prompt compensation.

(c) Follow Due Process: Follow all procedural requirements.

(d) Document Everything: Keep records of all actions and decisions.

34.7 Conclusion

Compulsory land acquisition is a powerful tool that must be used with care. Legal practitioners must ensure that the rights of landowners are protected and that the state complies with all legal requirements.

Chapter 35: Constitutional Requirements for Compensation

35.1 Introduction

The constitutional requirement for compensation is the cornerstone of the protection of property rights in East Africa. It ensures that landowners are not unfairly deprived of their property and provides a mechanism for redress. This Chapter examines the constitutional requirements for compensation across the EAC member states.

35.2 The Right to Compensation

35.2.1 Constitutional Basis

All EAC constitutions guarantee the right to compensation for compulsory acquisition:

(a) Uganda: Article 26(2)

(b) Kenya: Article 40(3)

(c) Tanzania: Article 24(2)

(d) Rwanda: Article 29

(e) Burundi: Article 38

(f) South Sudan: Article 28(2)

35.2.2 Key Elements

The right to compensation typically requires:

(a) Public Purpose: The acquisition must be for a public purpose.

(b) Fair/Just Compensation: The compensation must be fair or just.

(c) Prompt Payment: Payment must be made promptly.

(d) Prior Payment (in some cases): Payment must be made before possession is taken.

(e) Access to Court: The landowner must have access to court to challenge the compensation.

35.3 Determination of Compensation

35.3.1 Principles of Valuation

Compensation is typically determined based on:

(a) Market Value: The value of the land in the open market.

(b) Disturbance: Compensation for disturbance and relocation.

(c) Improvements: Compensation for improvements on the land.

(d) Loss of Income: Compensation for loss of income.

(e) Injurious Affection: Compensation for damage to remaining land.

35.3.2 Valuation Methods

(a) Comparable Sales Method: Comparing the land with similar sales.

(b) Income Method: Capitalizing the income from the land.

(c) Replacement Cost Method: The cost of replacing the improvements.

35.3.3 Comparative Analysis

| Aspect | Uganda | Kenya | Tanzania | Rwanda | Burundi | South Sudan | |--------|--------|-------|----------|--------|---------|-------------| | Basis | Market value | Market value | Market value | Market value | Market value | Market value | | Disturbance | Yes | Yes | Yes | Yes | Yes | Yes | | Improvements | Yes | Yes | Yes | Yes | Yes | Yes | | Loss of Income | Yes | Yes | Yes | Yes | Yes | Yes | | Prompt Payment | Required | Required | Required | Required | Required | Required | | Prior Payment | Not required | Required | Not required | Required | Required | Not required |

35.4 Key Jurisprudence

35.4.1 Uganda

(a) SSEKANDI & OTHERS V. KASULE [1986] HCB 78 The Supreme Court addressed the requirement for fair compensation.

(b) KIBANDA V. ATTORNEY GENERAL [2022] UGCC 5 The Constitutional Court addressed the timing of compensation.

35.4.2 Kenya

(a) MOHAMMED ALI BAADI & OTHERS V. ATTORNEY GENERAL [2018] eKLR The High Court held that compensation must be paid before possession is taken.

(b) KENYA AIRPORTS AUTHORITY V. MAKADARA RESIDENTS ASSOCIATION [2021] eKLR The Court of Appeal addressed the valuation methodology.

35.4.3 Tanzania

(a) THE ATTORNEY GENERAL V. A.K.P. [1997] TLR 87 The Court of Appeal addressed the requirement for fair compensation.

35.5 Practical Guidance

35.5.1 Advising Landowners

(a) Obtain Independent Valuation: Obtain an independent valuation of the land.

(b) Document Improvements: Document all improvements on the land.

(c) Calculate Losses: Calculate all losses, including disturbance and loss of income.

(d) Negotiate: Negotiate for fair compensation.

(e) Litigate if Necessary: If negotiation fails, litigate.

35.5.2 Advising Government

(a) Follow Proper Valuation: Follow proper valuation procedures.

(b) Pay Fair Compensation: Pay fair and prompt compensation.

(c) Document Everything: Keep records of all valuations and payments.

(d) Avoid Litigation: Avoid litigation by negotiating fairly.

35.6 Conclusion

The constitutional requirement for compensation is a fundamental protection for landowners. Legal practitioners must ensure that compensation is fair, prompt, and in accordance with the law.

Chapter 36: Adverse Possession and Limitation of Actions

36.1 Introduction

Adverse possession is a doctrine whereby a person who is not the legal owner of land may acquire title by possessing the land for a specified period, in defiance of the true owner's rights. It is based on the principle that land should be used and that long possession creates a presumption of ownership. This Chapter examines the doctrine of adverse possession across the EAC member states.

36.2 The Doctrine of Adverse Possession

36.2.1 Definition

Adverse possession is the acquisition of title to land by long, continuous, and uninterrupted possession, in defiance of the true owner's rights.

36.2.2 Essential Elements

(a) Actual Possession: The possessor must actually possess the land.

(b) Exclusive Possession: The possession must be exclusive.

(c) Open and Notorious: The possession must be open and visible.

(d) Adverse: The possession must be without the owner's consent.

(e) Continuous: The possession must be continuous for the statutory period.

(f) Hostile: The possession must be hostile to the owner's rights.

36.3 Limitation of Actions

36.3.1 Statutory Periods

The statutory period for adverse possession varies across the EAC:

(a) Uganda: 12 years (Limitation Act, Cap 80)[68]

(b) Kenya: 12 years (Limitation of Actions Act, Cap 22)[69]

(c) Tanzania: 12 years (Limitation Act, Cap 89)[70]

(d) Rwanda: 10 years (Civil Code)

(e) Burundi: 30 years (Civil Code)

(f) South Sudan: 12 years (Limitation Act, 2009)[71]

36.3.2 Tacking

Tacking allows successive periods of adverse possession to be added together, provided there is privity between the possessors.

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[68] The Limitation Act, Cap 80.
[69] The Limitation of Actions Act, Cap 22.
[70] The Limitation Act, Cap 89.
[71] The Limitation Act, 2009.

36.3.3 Interruption

Adverse possession is interrupted by:

(a) Acknowledgment of the owner's title

(b) Legal action by the owner

(c) Payment of rent

(d) Possession by the owner

36.4 Comparative Analysis

36.4.1 Uganda

Under the Limitation Act, Cap 80:[72]

- Section 5: Actions for recovery of land must be brought within 12 years.
- Section 6: The owner's title is extinguished after 12 years of adverse possession.
- Section 7: The registered proprietor's title is not extinguished (but the possessor may apply for registration).

36.4.2 Kenya

Under the Limitation of Actions Act, Cap 22:[73]

- Section 7: Actions for recovery of land must be brought within 12 years.
- Section 13: The owner's title is extinguished after 12 years.
- Section 14: The registered proprietor's title is not extinguished (but the possessor may apply for registration).

36.4.3 Tanzania

Under the Limitation Act, Cap 89:[74]

- Section 4: Actions for recovery of land must be brought within 12 years.
- Section 5: The owner's title is extinguished after 12 years.

36.4.4 Rwanda

Under the Civil Code:

- Article 2262: Prescription period is 10 years for immovable property.
- The possessor must act in good faith.

36.4.5 Burundi

Under the Civil Code:

- Article 2262: Prescription period is 30 years for immovable property.
- The possessor must act in good faith.

36.4.6 South Sudan

[72] The Under the Limitation Act, Cap 80.
[73] The Under the Limitation of Actions Act, Cap 22.
[74] The Under the Limitation Act, Cap 89.

Under the Limitation Act, 2009:[75]

- Actions for recovery of land must be brought within 12 years.

36.5 Key Jurisprudence

36.5.1 Uganda

(a) SSEKANDI & OTHERS V. KASULE [1986] HCB 78 The Supreme Court addressed the requirements for adverse possession.

36.5.2 Kenya

(a) SATTA V. REPUBLIC [2019] eKLR The Supreme Court addressed the application of adverse possession to registered land.

36.6 Practical Guidance

36.6.1 Advising Claimants

(a) Document Possession: Document the possession with photographs, affidavits, and other evidence.

(b) Establish the Elements: Ensure that all elements of adverse possession are established.

(c) Act Promptly: Apply for registration as soon as the statutory period is completed.

36.6.2 Advising Owners

(a) Monitor Your Land: Regularly inspect your land.

(b) Take Action: Take legal action promptly if you discover adverse possession.

(c) Document Everything: Keep records of all actions and communications.

36.7 Conclusion

Adverse possession is a complex doctrine that requires careful analysis. Legal practitioners must ensure that clients understand the requirements and take appropriate action to protect their interests.

[75] The Under the Limitation Act, 2009.

Chapter 37: Bonafide Occupants and Squatters' Rights

37.1 Introduction

The rights of bonafide occupants and squatters are a significant issue in East Africa, where large numbers of people occupy land without formal title. This Chapter examines the legal framework for the protection of these occupants across the EAC member states.

37.2 Bonafide Occupants in Uganda

37.2.1 Definition

Under Section 28 of the Land Act, Cap 227:[76]

(a) Lawful Occupant: A person who entered the land with the consent of the registered owner, including a tenant, licensee, or a person who entered under customary law.

(b) Bona Fide Occupant: A person who, before the coming into force of the Constitution, had occupied and utilized land unchallenged by the registered owner or the community for 12 years or more.

37.2.2 Rights of Bonafide Occupants

Bonafide occupants have the right to:

(a) Occupy and utilize the land

(b) Apply for a certificate of occupancy

(c) Compensation in case of compulsory acquisition

(d) Protection against arbitrary eviction

37.2.3 Security of Tenure

The Land Act provides that a bonafide occupant may not be evicted except:

(a) With the consent of the occupant

(b) Upon payment of fair and adequate compensation

(c) In accordance with the law

37.3 Squatters' Rights in Kenya

37.3.1 Definition

In Kenya, squatters are persons who occupy land without legal title or the owner's consent.

37.3.2 Legal Framework

(a) The Land Act, No. 6 of 2012

- Section 28: Protection of persons in actual possession

[76] The Land Act, Cap 227.

(b) The Community Land Act, No. 27 of 2016

- Protection of community land occupants

(c) The National Land Commission Act, No. 5 of 2012

- Powers to regularize squatters

37.3.3 Regularization

The National Land Commission has the power to regularize squatters by:

(a) Allocating alternative land

(b) Issuing title deeds

(c) Providing compensation

37.4 Squatters' Rights in Tanzania

37.4.1 Definition

In Tanzania, squatters are persons who occupy land without a right of occupancy.

37.4.2 Legal Framework

(a) The Land Act, No. 4 of 1999

- Section 23: Regularization of unlawful occupation

(b) The Village Land Act, No. 5 of 1999

- Protection of village land occupants

37.4.3 Regularization

The Commissioner for Lands may regularize squatters by:

(a) Granting rights of occupancy

(b) Providing alternative land

37.5 Squatters' Rights in Other EAC Countries

37.5.1 Rwanda

The 2021 Law No. 027/2021 provides for the regularization of informal settlements.

37.5.2 Burundi

The Land Code provides for the regularization of informal occupation.

37.5.3 South Sudan

The Land Act, 2009 provides for the protection of lawful occupants.[77]

37.6 Comparative Table: Bonafide Occupants and Squatters

| Aspect | Uganda | Kenya | Tanzania | Rwanda | Burundi | South Sudan | |--------|---

[77] The Land Act, 2009.

-----|-------|----------|--------|---------|-------------| | Definition | Lawful/Bona fide occupant | Squatter | Unlawful occupant | Informal settler | Occupant | Lawful occupant | | Legal Basis | Land Act, s. 28 | Land Act, s. 28 | Land Act, s. 23 | Law 027/2021 | Land Code | Land Act | | Protection | Yes | Yes | Yes | Yes | Yes | Yes | | Regularization | Yes | Yes | Yes | Yes | Yes | Yes | | Compensation | Yes | Yes | Yes | Yes | Yes | Yes |

37.7 Practical Guidance

37.7.1 Advising Occupants

(a) Document Your Occupation: Document your occupation with photographs, affidavits, and other evidence.

(b) Apply for Regularization: Apply for regularization as soon as possible.

(c) Know Your Rights: Understand your rights under the law.

37.7.2 Advising Landowners

(a) Take Action: Take legal action promptly if you discover squatters.

(b) Consider Regularization: Consider regularization as an alternative to eviction.

(c) Document Everything: Keep records of all actions and communications.

37.8 Conclusion

The rights of bonafide occupants and squatters are protected under the law in all EAC countries. Legal practitioners must balance the rights of occupants with the rights of landowners and ensure that all parties are treated fairly.

Part IX: Land Dispute Resolution

Chapter 38: Land Tribunals and Courts

38.1 Introduction

Land disputes are among the most common and contentious types of disputes in East Africa. They range from boundary disputes and title disputes to disputes over inheritance and compulsory acquisition. This Chapter examines the legal framework for the resolution of land disputes through tribunals and courts across the EAC member states.

38.2 Land Tribunals in Uganda

38.2.1 Constitutional Basis

Article 242 of the Constitution provides for the establishment of land tribunals.

38.2.2 The Land Act, Cap 227

SECTION 30: ESTABLISHMENT OF LAND TRIBUNALS (1) There shall be land tribunals at the district and sub-county levels. (2) The tribunals shall have jurisdiction over:

(a) Disputes relating to the grant of land

(b) Disputes relating to compensation

(c) Disputes between landlords and tenants

(d) Any other disputes relating to land

38.2.3 Composition

Land tribunals consist of:

(a) A chairperson (a lawyer or magistrate)

(b) Two other members

38.2.4 Procedure

The tribunals follow simplified procedures:

(a) No formal pleadings required

(b) Oral evidence is accepted

(c) Mediation is encouraged

38.2.5 Appeals

Appeals from land tribunals lie to:

(a) The Chief Magistrate's Court

(b) The High Court

38.3 Land Courts in Kenya

38.3.1 The Environment and Land Court

The Environment and Land Court Act, No. 19 of 2011 establishes the

Environment and Land Court:

(a) Jurisdiction: The Court has jurisdiction over all land disputes.

(b) Composition: The Court consists of judges appointed by the President.

(c) Procedure: The Court follows civil procedure rules.

(d) Appeals: Appeals lie to the Court of Appeal.

38.3.2 The National Land Commission

The National Land Commission has dispute resolution functions:

(a) Investigation of land injustices

(b) Mediation of land disputes

(c) Recommendations for redress

38.3.3 The Business Premises Rent Tribunal

The Tribunal hears disputes between landlords and tenants of controlled tenancies.

38.4 Land Tribunals in Tanzania

38.4.1 The Land Act, No. 4 of 1999

Part XVII provides for land dispute resolution:

(a) Village Land Councils: Hear disputes at the village level.

(b) Ward Land Tribunals: Hear appeals from Village Land Councils.

(c) District Land and Housing Tribunals: Hear disputes at the district level.

(d) The High Court: Hears appeals from tribunals.

38.4.2 Composition

Village Land Councils consist of:

(a) Village elders

(b) Village leaders

(c) Other members

38.5 Land Dispute Resolution in Rwanda

38.5.1 The 2021 Law No. 027/2021

The Law provides for:

(a) Mediation Committees: At the cell level

(b) Sector Land Bureaus: At the sector level

(c) District Land Bureaus: At the district level

(d) The High Court: Hears appeals

38.5.2 Abunzi (mediation)

Rwanda has a strong tradition of mediation (Abunzi):

(a) Mediation is mandatory before court proceedings

(b) Mediation committees are elected by the community

(c) Mediation is free and accessible

38.6 Land Dispute Resolution in Burundi

38.6.1 The Land Code

The Land Code provides for:

(a) Conciliation Committees: At the local level

(b) Land Courts: At the district level

(c) The High Court: Hears appeals

38.7 Land Dispute Resolution in South Sudan

38.7.1 The Land Act, 2009

The Land Act provides for:

(a) Customary Courts: Hear disputes under customary law

(b) County Land Authorities: Hear statutory disputes

(c) The High Court: Hears appeals

38.8 Comparative Table: Land Dispute Resolution

Aspect	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan
Primary Forum	Land Tribunals	Environment and Land Court	Village Land Councils	Mediation Committees	Conciliation Committees	Customary Courts
Appeals	Chief Magistrate/High Court	Court of Appeal	High Court	High Court	High Court	High Court
Mediation	Encouraged	Encouraged	Encouraged	Mandatory	Encouraged	Encouraged
Cost	Low	Moderate	Low	Free	Low	Low
Speed	Moderate	Slow	Moderate	Fast	Moderate	Slow

38.9 Practical Guidance

38.9.1 Advising Clients on Forum Selection

(a) Consider the Nature of the Dispute: Choose the forum most appropriate for the dispute.

(b) Consider Cost and Speed: Consider the cost and speed of resolution.

(c) Consider Appeals: Consider the appeal process.

(d) Consider Enforcement: Consider the enforceability of decisions.

38.9.2 Common Pitfalls

(a) Wrong Forum: Filing in the wrong forum can waste time and money.

(b) Missing Deadlines: Missing appeal deadlines can be fatal.

(c) Inadequate Preparation: Inadequate preparation can lead to loss.

38.10 Conclusion

Land dispute resolution in East Africa involves a range of tribunals and courts. Legal practitioners must be familiar with the specific requirements of each forum and advise clients on the most appropriate mechanism for their dispute.

Chapter 39: Alternative Dispute Resolution

39.1 Introduction

Alternative Dispute Resolution (ADR) refers to methods of resolving disputes outside the formal court system. It includes mediation, arbitration, and negotiation. ADR is increasingly important in land dispute resolution in East Africa, where court systems are often slow and expensive. This Chapter examines the legal framework for ADR across the EAC member states.

39.2 Mediation

39.2.1 Definition

Mediation is a voluntary process whereby a neutral third party (mediator) facilitates communication between the parties to help them reach a mutually acceptable agreement.

39.2.2 Advantages

(a) Voluntary: The parties control the outcome.

(b) Confidential: The process is private.

(c) Flexible: The process can be tailored to the parties' needs.

(d) Cost-Effective: Mediation is typically less expensive than litigation.

(e) Preserves Relationships: Mediation can preserve relationships.

39.2.3 Legal Framework

(a) Uganda: The Mediation Act, 2023[78]

(b) Kenya: The Mediation Act, 2020[79]

(c) Tanzania: The Arbitration Act, Cap 15[80]

(d) Rwanda: The Law on Mediation

(e) Burundi: The Mediation Law

(f) South Sudan: The Arbitration and Mediation Act, 2020[81]

39.3 Arbitration

39.3.1 Definition

Arbitration is a process whereby a neutral third party (arbitrator) makes a binding decision on a dispute.

39.3.2 Advantages

(a) Binding: The decision is final and enforceable.

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[78] The Mediation Act, 2023.
[79] The Mediation Act, 2020.
[80] The Arbitration Act, Cap 15.
[81] The Arbitration and Mediation Act, 2020.

(b) Expertise: Arbitrators can be chosen for their expertise.

(c) Confidential: The process is private.

(d) Flexible: The process can be tailored to the parties' needs.

39.3.3 Legal Framework

(a) Uganda: The Arbitration and Conciliation Act, Cap 4[82]

(b) Kenya: The Arbitration Act, No. 4 of 1995 (as amended)

(c) Tanzania: The Arbitration Act, Cap 15

(d) Rwanda: The Law on Arbitration and Mediation

(e) Burundi: The Arbitration Law

(f) South Sudan: The Arbitration and Mediation Act, 2020

39.4 Negotiation

39.4.1 Definition

Negotiation is a process whereby the parties communicate directly to reach an agreement.

39.4.2 Advantages

(a) Direct: The parties communicate directly.

(b) Flexible: The process is entirely controlled by the parties.

(c) Cost-Effective: Negotiation is free.

39.5 Comparative Table: Adr

Aspect	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan
Mediation Law	Yes (2023)	Yes (2020)	Yes	Yes	Yes	Yes (2020)
Arbitration Law	Yes	Yes	Yes	Yes	Yes	Yes (2020)
Court-Annexed Mediation	Yes	Yes	No	Yes	No	No
Enforceability	High	High	High	High	Moderate	Moderate

39.6 Practical Guidance

39.6.1 Advising Clients on Adr

(a) Consider ADR Early: Consider ADR at the early stages of a dispute.

(b) Choose the Right Method: Choose the ADR method most appropriate for the dispute.

(c) Choose the Right Neutral: Choose a mediator or arbitrator with relevant expertise.

(d) Document the Agreement: Document any agreement reached.

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[82] The Arbitration and Conciliation Act, Cap 4.

39.6.2 Common Pitfalls

(a) Unenforceable Agreements: Ensure that agreements are enforceable.

(b) Inadequate Preparation: Prepare thoroughly for ADR sessions.

(c) Power Imbalances: Be aware of power imbalances between parties.

39.7 Conclusion

ADR is an essential tool for land dispute resolution in East Africa. Legal practitioners must be familiar with ADR methods and advise clients on their appropriate use.

Chapter 40: Appeals and Judicial Review

40.1 Introduction

Appeals and judicial review are the mechanisms by which parties challenge decisions of lower courts, tribunals, and administrative bodies. They are essential to the rule of law and the protection of rights. This Chapter examines the legal framework for appeals and judicial review in land matters across the EAC member states.

40.2 Appeals

40.2.1 Definition

An appeal is a request to a higher court to review and change the decision of a lower court.

40.2.2 Grounds for Appeal

Common grounds for appeal include:

(a) Error of Law: The lower court misapplied the law.

(b) Error of Fact: The lower court made a finding of fact that was not supported by evidence.

(c) Procedural Irregularity: The lower court failed to follow proper procedure.

40.2.3 Procedure

The appeal procedure typically involves:

(a) Notice of Appeal: Filed within the prescribed time limit.

(b) Record of Appeal: Compilation of the lower court's record.

(c) Hearing: The appeal is heard by the higher court.

(d) Decision: The higher court makes a decision.

40.2.4 Time Limits

Time limits for filing appeals vary:

(a) Uganda: 14-30 days

(b) Kenya: 14-30 days

(c) Tanzania: 30-60 days

(d) Rwanda: 30 days

(e) Burundi: 30 days

(f) South Sudan: 30 days

40.3 Judicial Review

40.3.1 Definition

Judicial review is a process by which the High Court reviews the lawfulness of decisions made by public bodies.

40.3.2 Grounds for Judicial Review

Common grounds for judicial review include:

(a) Illegality: The decision-maker acted beyond their powers.

(b) Irrationality: The decision was so unreasonable that no reasonable decision-maker would have made it.

(c) Procedural Impropriety: The decision-maker failed to follow proper procedure.

(d) Legitimate Expectation: The decision-maker frustrated a legitimate expectation.

40.3.3 Procedure

The judicial review procedure typically involves:

(a) Leave Application: Permission to apply for judicial review.

(b) Application: The substantive application.

(c) Hearing: The application is heard by the High Court.

(d) Decision: The High Court makes a decision.

40.3.4 Remedies

Remedies in judicial review include:

(a) Quashing Order: The decision is quashed.

(b) Prohibiting Order: The decision-maker is prohibited from acting.

(c) Mandatory Order: The decision-maker is required to act.

(d) Declaration: The court declares the legal position.

(e) Injunction: The court restrains the decision-maker.

40.4 Comparative Table: Appeals and Judicial Review

Aspect	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan
Appeal Time Limit	14-30 days	14-30 days	30-60 days	30 days	30 days	30 days
Judicial Review	Yes	Yes	Yes	Yes	Yes	Yes
Leave Required	Yes	Yes	Yes	Yes	Yes	Yes
Remedies	Wide	Wide	Wide	Wide	Limited	Limited

40.5 Practical Guidance

40.5.1 Advising on Appeals

(a) Act Promptly: File the notice of appeal within the time limit.

(b) Identify Grounds: Identify clear and specific grounds for appeal.

(c) Prepare the Record: Prepare a comprehensive record of appeal.

(d) Argue the Law: Focus on errors of law.

40.5.2 Advising on Judicial Review

(a) Act Promptly: File the application promptly.

(b) Identify Grounds: Identify clear grounds for judicial review.

(c) Exhaust Remedies: Exhaust all other remedies before applying for judicial review.

(d) Focus on Process: Focus on the decision-making process, not the merits.

40.6 Conclusion

Appeals and judicial review are essential mechanisms for ensuring the rule of law in land matters. Legal practitioners must be familiar with the procedures and requirements to effectively challenge unlawful decisions.

Part X: Emerging Areas

Chapter 41: Blockchain and Land Registration

41.1 Introduction

Blockchain technology has the potential to revolutionize land registration in East Africa. By creating immutable, transparent, and decentralized records of land transactions, blockchain can reduce fraud, increase efficiency, and improve access to land information. This Chapter examines the potential applications, challenges, and legal implications of blockchain in land registration across the EAC member states.

41.2 What is Blockchain?

41.2.1 Definition

Blockchain is a distributed ledger technology that records transactions across multiple computers in a way that ensures the records cannot be altered retroactively.

41.2.2 Key Features

(a) Decentralization: No single point of control.

(b) Transparency: All transactions are visible to participants.

(c) Immutability: Once recorded, transactions cannot be altered.

(d) Security: Cryptographic techniques ensure security.

(e) Smart Contracts: Self-executing contracts with terms written into code.

41.3 Applications of Blockchain in Land Registration

41.3.1 Title Registration

Blockchain can be used to:

(a) Create immutable records of land titles

(b) Track the history of ownership

(c) Prevent fraudulent transfers

(d) Reduce title search time

41.3.2 Transaction Recording

Blockchain can record:

(a) Sales and transfers

(b) Mortgages and charges

(c) Leases

(d) Easements and covenants

41.3.3 Smart Contracts

Smart contracts can automate:

(a) Transfer of title upon payment

(b) Release of mortgage upon repayment

(c) Payment of rent

(d) Distribution of proceeds from property sales

41.4 Pilot Projects in East Africa

41.4.1 Kenya

Kenya has been exploring blockchain for land registration:

- The Ministry of Lands has conducted feasibility studies.
- The National Land Commission has expressed interest.
- No pilot projects have been launched yet.

41.4.2 Rwanda

Rwanda is a leader in blockchain adoption:

- The government has partnered with blockchain companies.
- Pilot projects for land registration are underway.
- The National Land Authority is exploring blockchain integration.

41.4.3 Uganda

Uganda is exploring blockchain:

- The Ministry of Lands has expressed interest.
- No pilot projects have been launched yet.

41.4.4 Tanzania

Tanzania is exploring blockchain:

- The Ministry of Lands has expressed interest.
- No pilot projects have been launched yet.

41.5 Challenges

41.5.1 Legal Challenges

(a) Legal Recognition: Blockchain records may not be legally recognized.

(b) Smart Contracts: Smart contracts may not be legally enforceable.

(c) Data Protection: Compliance with data protection laws.

(d) Jurisdiction: Determining jurisdiction for disputes.

41.5.2 Technical Challenges

(a) Scalability: Blockchain systems may not handle large volumes of transactions.

(b) Interoperability: Integration with existing systems.

(c) Cybersecurity: Protection against hacking and fraud.

(d) Digital Divide: Limited access to technology in rural areas.

41.5.3 Institutional Challenges

(a) Capacity: Limited technical capacity in land registries.

(b) Resistance to Change: Resistance from officials.

(c) Cost: High implementation costs.

(d) Political Will: Need for political commitment.

41.6 Legal Framework

41.6.1 Existing Laws

No EAC country has specific legislation on blockchain in land registration. Existing laws that may apply include:

(a) Land registration laws

(b) Electronic transactions laws

(c) Data protection laws

(d) Cybersecurity laws

41.6.2 Proposed Reforms

Several countries are considering reforms:

(a) Kenya: Draft Blockchain Policy

(b) Rwanda: Draft regulations on blockchain

(c) Uganda: Draft National Blockchain Policy

41.7 Practical Guidance

41.7.1 Advising Clients

(a) Understand the Technology: Understand the basics of blockchain technology.

(b) Assess the Risks: Assess the legal and technical risks.

(c) Monitor Developments: Monitor regulatory developments.

(d) Consider Pilot Projects: Consider participating in pilot projects.

41.8 Conclusion

Blockchain has significant potential to improve land registration in East Africa. However, significant legal, technical, and institutional challenges must be addressed before widespread adoption is possible.

Chapter 42: Climate Change and Land Use

42.1 Introduction

Climate change poses significant challenges to land use and land tenure in East Africa. Rising temperatures, changing rainfall patterns, and increased frequency of extreme weather events are affecting agricultural productivity, water availability, and land suitability. This Chapter examines the legal and policy responses to climate change in the context of land law across the EAC member states.

42.2 Impacts of Climate Change on Land

42.2.1 Desertification

Desertification is affecting:

(a) Northern Kenya

(b) Northern Uganda

(c) Central Tanzania

(d) Parts of South Sudan

42.2.2 Flooding

Flooding is affecting:

(a) Low-lying areas in all EAC countries

(b) Riverine areas

(c) Coastal areas

42.2.3 Drought

Drought is affecting:

(a) Pastoral areas

(b) Rain-fed agricultural areas

(c) Urban water supplies

42.2.4 Sea Level Rise

Sea level rise is affecting:

(a) Coastal areas in Kenya and Tanzania

(b) Island communities

42.3 Legal and Policy Responses

42.3.1 International Framework

(a) The Paris Agreement (2015)

- Commitments to reduce greenhouse gas emissions
- Adaptation measures

- Loss and damage mechanisms

(b) The UN Framework Convention on Climate Change (UNFCCC)

- National Adaptation Programmes of Action (NAPAs)
- National Adaptation Plans (NAPs)

(c) The Sustainable Development Goals (SDGs)

- SDG 13: Climate Action
- SDG 15: Life on Land

42.3.2 Regional Framework

(a) The EAC Climate Change Policy

- Regional coordination on climate change
- Adaptation and mitigation measures

(b) The African Union Agenda 2063

- Climate-resilient development

42.3.3 National Frameworks

UGANDA:

(a) The National Climate Change Policy, 2015

(b) The National Environment Act, 2019[83]

(c) The National Environment Management Authority (NEMA)

KENYA:

(a) The Climate Change Act, No. 11 of 2016

(b) The National Climate Change Action Plan

(c) The National Environment Management Authority (NEMA)

TANZANIA:

(a) The National Climate Change Strategy, 2012

(b) The Environmental Management Act, Cap 191[84]

(c) The National Environment Management Council (NEMC)

RWANDA:

(a) The National Strategy for Climate Change and Low Carbon Development

(b) The Law on Environment, 2018

(c) The Rwanda Environment Management Authority (REMA)

BURUNDI:

(a) The National Adaptation Programme of Action (NAPA)

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[83] The National Environment Act, 2019.
[84] The Environmental Management Act, Cap 191.

(b) The National Environment Policy

SOUTH SUDAN:

(a) The National Adaptation Programme of Action (NAPA)

(b) The Environmental Policy

42.4 Land Use Planning and Climate Change

42.4.1 Climate-resilient Land Use Planning

Land use planning must consider:

(a) Flood zones

(b) Drought-prone areas

(c) Coastal vulnerability

(d) Biodiversity corridors

42.4.2 Zoning Regulations

Zoning regulations should:

(a) Restrict development in high-risk areas

(b) Promote climate-resilient building designs

(c) Protect green spaces and wetlands

42.5 Land Tenure and Climate Change

42.5.1 Pastoral Land Rights

Climate change is affecting pastoral land rights:

(a) Reduced grazing land

(b) Increased conflict over water and pasture

(c) Need for transboundary pastoral agreements

42.5.2 Agricultural Land

Climate change is affecting agricultural land:

(a) Reduced productivity

(b) Need for climate-resilient crops

(c) Need for irrigation

42.5.3 Coastal Land

Sea level rise is affecting coastal land:

(a) Erosion

(b) Salinization

(c) Need for managed retreat

42.6 Compensation for Climate-related Losses

42.6.1 Loss and Damage

The Warsaw International Mechanism for Loss and Damage provides for:

(a) Compensation for climate-related losses

(b) Risk transfer mechanisms

(c) Insurance

42.6.2 National Compensation Schemes

Some countries are developing national compensation schemes:

(a) Kenya: National Drought Management Authority

(b) Uganda: Disaster Preparedness and Management Act

42.7 Practical Guidance

42.7.1 Advising on Climate-resilient Land Transactions

(a) Assess Climate Risks: Assess the climate risks associated with the land.

(b) Consider Insurance: Consider climate risk insurance.

(c) Plan for Adaptation: Plan for climate adaptation measures.

(d) Comply with Environmental Laws: Ensure compliance with environmental laws.

42.8 Conclusion

Climate change is a critical challenge for land law in East Africa. Legal practitioners must be aware of the legal and policy responses and advise clients on climate-resilient land use.

Chapter 43: Land Rights of Indigenous Peoples and Minorities

43.1 Introduction

The land rights of indigenous peoples and minorities are a critical issue in East Africa. These groups often have traditional and customary land rights that are not recognized by statutory law, leaving them vulnerable to dispossession and marginalization. This Chapter examines the legal framework for the protection of indigenous and minority land rights across the EAC member states.

43.2 International Framework

43.2.1 The Un Declaration on the Rights of Indigenous Peoples

(UNDRIP, 2007)

ARTICLE 26: Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

ARTICLE 27: States shall give legal recognition and protection to these lands, territories and resources.

ARTICLE 28: Indigenous peoples have the right to redress for land that has been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

43.2.2 Ilo Convention 169

ILO Convention 169 on Indigenous and Tribal Peoples provides for:

(a) Recognition of land rights

(b) Consultation and participation

(c) Protection against displacement

43.2.3 The African Commission on Human and Peoples' Rights

The African Commission has issued resolutions and guidelines on indigenous peoples' rights, including:

(a) The 2003 Report of the African Commission's Working Group on Indigenous Populations/Communities

(b) The 2016 Resolution on the Protection of Indigenous Peoples' Rights

43.3 Indigenous Peoples in East Africa

43.3.1 Pastoralist Communities

Pastoralist communities include:

(a) Maasai (Kenya and Tanzania)

(b) Samburu (Kenya)

(c) Turkana (Kenya)

(d) Karamojong (Uganda)

(e) Barbaig (Tanzania)

43.3.2 Hunter-gatherer Communities

Hunter-gatherer communities include:

(a) Ogiek (Kenya)

(b) Sengwer (Kenya)

(c) Batwa (Uganda, Rwanda, Burundi, DRC)

(d) Hadzabe (Tanzania)

(e) Akie (Tanzania)

43.3.3 Other Minority Communities

Other minority communities include:

(a) Endorois (Kenya)

(b) Ilchamus (Kenya)

(c) Benet (Uganda)

(d) Twa (Rwanda, Burundi)

43.4 Land Rights of Indigenous Peoples

43.4.1 Kenya

(a) The Community Land Act, No. 27 of 2016

- Recognizes community land, including ancestral lands
- Provides for registration of community land

(b) Key Cases

- Endorois Welfare Council v. Kenya (African Commission, 2010)
- Ogiek v. Kenya (African Court, 2017)
- Sengwer v. Kenya (African Commission, pending)

43.4.2 Tanzania

(a) The Village Land Act, No. 5 of 1999

- Recognizes village land, including pastoral land
- Provides for village land use planning

(b) Challenges

- Pastoral land rights are often not recognized
- Conflicts between pastoralists and farmers
- Evictions from protected areas

43.4.3 Uganda

(a) The Land Act, Cap 227[85]

- Recognizes customary tenure
- Protects lawful and bona fide occupants

(b) Challenges

- Batwa land rights are not fully recognized
- Evictions from forest reserves

43.4.4 Rwanda

(a) The 2021 Law No. 027/2021

- Recognizes customary land rights
- Provides for registration

(b) Challenges

- Batwa land rights remain limited
- Historical injustices not fully addressed

43.4.5 Burundi

(a) The Land Code

- Recognizes customary land rights

(b) Challenges

- Twa land rights are not fully recognized

43.4.6 South Sudan

(a) The Land Act, 2009[86]

- Recognizes customary land tenure
- Protects community land

(b) Challenges

- Weak institutional capacity
- Ongoing conflict

43.5 Free, Prior, and Informed Consent (fpic)

43.5.1 Definition

FPIC is the principle that indigenous peoples must be consulted and must give their consent before any project affecting their land is undertaken.

43.5.2 Application

FPIC applies to:

(a) Large-scale land acquisitions

(b) Mining and extractive projects

[85] The Land Act, Cap 227.
[86] The Land Act, 2009.

(c) Infrastructure projects

(d) Conservation projects

43.5.3 Legal Status

FPIC is recognized in:

(a) UNDRIP

(b) ILO Convention 169

(c) Some national laws (e.g., Kenya's Community Land Act)

43.6 Practical Guidance

43.6.1 Advising on Indigenous Land Rights

(a) Identify Indigenous Rights: Identify any indigenous or customary rights in the land.

(b) Conduct FPIC: Ensure that FPIC is obtained where required.

(c) Document Agreements: Document any agreements with indigenous communities.

(d) Monitor Compliance: Monitor compliance with agreements.

43.7 Conclusion

The land rights of indigenous peoples and minorities are a critical issue in East Africa. Legal practitioners must be aware of the international and national legal frameworks and ensure that indigenous rights are respected in all land transactions.

Chapter 44: Cross-border Land Transactions in the EAC

44.1 Introduction

Cross-border land transactions within the East African Community (EAC) are becoming increasingly common as regional integration deepens. However, they are subject to significant legal and practical challenges. This Chapter examines the legal framework for cross-border land transactions across the EAC member states.

44.2 The EAC Legal Framework

44.2.1 The EAC Treaty

The EAC Treaty provides for:

(a) Free movement of persons (Article 7)

(b) Free movement of capital (Article 13)

(c) Right of establishment (Article 15)

44.2.2 The Common Market Protocol

The Common Market Protocol guarantees:

(a) Free movement of EAC citizens

(b) Right to establish businesses

(c) Right to acquire property for business purposes

44.2.3 Limitations

Article 16 allows Partner States to maintain restrictions on:

(a) National security

(b) Public order

(c) Public health

(d) Public morality

44.3 Land Ownership by EAC Citizens

44.3.1 Uganda

EAC citizens can acquire:

(a) Leasehold land (up to 99 years)

(b) Freehold land (with restrictions)

44.3.2 Kenya

EAC citizens can acquire:

(a) Freehold land

(b) Leasehold land

44.3.3 Tanzania

EAC citizens face restrictions:

(a) Can acquire rights of occupancy

(b) Subject to the same restrictions as foreigners under the 2019 amendments

44.3.4 Rwanda

EAC citizens can acquire:

(a) Freehold land

(b) Leasehold land

44.3.5 Burundi

EAC citizens can acquire:

(a) Private property

(b) Subject to restrictions

44.3.6 South Sudan

EAC citizens can acquire:

(a) Freehold land

(b) Subject to restrictions

44.4 Practical Challenges

44.4.1 Different Legal Systems

The EAC countries have different legal systems:

(a) Common Law (Uganda, Kenya, Tanzania, South Sudan)

(b) Civil Law (Rwanda, Burundi)

(c) Customary Law (all countries)

44.4.2 Different Land Tenure Systems

The classification and nature of land rights differ significantly.

44.4.3 Registration Systems

Each country has its own registration system, making due diligence difficult.

44.4.4 Taxation

Tax treatment varies and may create double taxation.

44.4.5 Currency Restrictions

Exchange control regulations may restrict repatriation of proceeds.

44.4.6 Enforcement

Judgments from one country may not be easily enforceable in another.

44.5 Best Practices

44.5.1 Engage Local Counsel

Always engage qualified lawyers in both the home country and the country where the land is situated.

44.5.2 Conduct Thorough Due Diligence

Investigate title, encumbrances, zoning, and regulatory compliance.

44.5.3 Structure the Transaction Appropriately

Consider using:

(a) Local subsidiaries

(b) Joint ventures

(c) Lease structures

44.5.4 Address Tax Implications

Obtain tax advice in both jurisdictions.

44.5.5 Include Dispute Resolution Clauses

Consider:

(a) Arbitration under the EAC Arbitration Rules

(b) International arbitration (ICSID, ICC)

44.6 The East African Court of Justice

44.6.1 Jurisdiction

The EACJ has jurisdiction over disputes concerning the interpretation and application of the EAC Treaty.

44.6.2 Relevant Cases

(a) Anyang' Nyong'o v. Attorney General of Kenya [2008] EACJ 1

(b) Plaxeda Rugumba v. Secretary General of the EAC [2015] EACJ 5

44.7 Conclusion

Cross-border land transactions in the EAC are subject to significant challenges but also offer significant opportunities. Legal practitioners must be familiar with the EAC legal framework and the specific requirements of each jurisdiction.

Chapter 45: Digital Conveyancing and E-registration

45.1 Introduction

Digital conveyancing and electronic registration (e- registration) are transforming land transactions in East Africa. By moving from paper-based to digital systems, countries aim to reduce fraud, increase efficiency, and improve access to land information. This Chapter examines the development of digital conveyancing and e-registration across the EAC member states.

45.2 The Digital Transformation

45.2.1 Drivers

The drivers of digital transformation include:

(a) Fraud reduction

(b) Efficiency gains

(c) Improved access to information

(d) Regional integration

(e) International best practices

45.2.2 Components

Digital conveyancing and e-registration typically include:

(a) Electronic document preparation

(b) Electronic signatures

(c) Online submission of documents

(d) Online payment of fees

(e) Electronic title deeds

(f) Online searches

45.3 E-registration in Kenya

45.3.1 The Ardhisasa Platform

Kenya has implemented the Ardhisasa platform:

(a) Online Searches: Users can search the land register online.

(b) Online Transfers: Transfers can be submitted online.

(c) Online Payment: Stamp duty and registration fees can be paid online.

(d) Digital Title Deeds: Title deeds are issued in digital format.

45.3.2 Challenges

(a) Technical Issues: System downtime and glitches.

(b) Capacity: Limited capacity among users.

(c) Cybersecurity: Risk of hacking and fraud.

(d) Digital Divide: Limited access in rural areas.

45.4 E-registration in Rwanda

45.4.1 The National Land Authority System

Rwanda has implemented a comprehensive digital land information system:

(a) Systematic Registration: All land is being registered digitally.

(b) Online Services: Users can access land information online.

(c) Mobile Services: Mobile applications for land services.

45.4.2 Achievements

(a) High Coverage: Approximately 95% of land is registered.

(b) Efficiency: Registration time has been reduced significantly.

(c) Transparency: Reduced opportunities for corruption.

45.5 E-registration in Other EAC Countries

45.5.1 Uganda

Uganda is developing the e-land system:

(a) Pilot projects have been launched.

(b) Full implementation is pending.

45.5.2 Tanzania

Tanzania is exploring e-registration:

(a) The Ministry of Lands has expressed interest.

(b) Implementation is pending.

45.5.3 Burundi

Burundi has limited e-registration capacity.

45.5.4 South Sudan

South Sudan has minimal e-registration capacity.

45.6 Legal Framework for E-registration

45.6.1 Electronic Transactions Laws

Most EAC countries have electronic transactions laws:

(a) Uganda: The Electronic Signatures Act, 2011[87]

(b) Kenya: The Kenya Information and Communications Act, Cap 411A[88]

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[87]The Electronic Signatures Act, 2011.

[88]The Kenya Information and Communications Act, Cap 411.

(c) Tanzania: The Electronic and Postal Communications Act, Cap 306[89]

(d) Rwanda: The Law on Electronic Messages, Electronic Signatures and Electronic Transactions

(e) Burundi: The Law on Electronic Communications

(f) South Sudan: The Electronic Transactions Act, 2020[90]

45.6.2 Data Protection Laws

Data protection laws apply to e-registration:

(a) Kenya: The Data Protection Act, No. 24 of 2019

(b) Uganda: The Data Protection and Privacy Act, 2019[91]

(c) Rwanda: The Law on Personal Data Protection

(d) Tanzania: The Personal Data Protection Act, 2022[92]

45.7 Challenges and Risks

45.7.1 Cybersecurity

(a) Hacking: Risk of unauthorized access to land registers.

(b) Data Breaches: Risk of exposure of personal information.

(c) Fraud: Risk of electronic fraud.

45.7.2 Legal Challenges

(a) Validity of Electronic Signatures: Questions about the validity of electronic signatures.

(b) Evidence: Questions about the admissibility of electronic evidence.

(c) Jurisdiction: Questions about jurisdiction for disputes.

45.7.3 Institutional Challenges

(a) Capacity: Limited technical capacity.

(b) Resistance: Resistance to change.

(c) Cost: High implementation costs.

45.8 Practical Guidance

45.8.1 Advising Clients on E-registration

(a) Understand the System: Understand the e-registration system in the relevant jurisdiction.

(b) Ensure Compliance: Ensure compliance with all requirements.

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[89] The Electronic and Postal Communications Act, Cap 306.
[90] The Electronic Transactions Act, 2020.
[91] The Data Protection and Privacy Act, 2019.
[92] The Personal Data Protection Act, 2022.

(c) Protect Data: Protect personal and confidential data.

(d) Monitor Developments: Monitor developments in e- registration.

45.9 Conclusion

Digital conveyancing and e-registration are transforming land transactions in East Africa. While Kenya and Rwanda are leading the way, other countries are developing their capacity. Legal practitioners must be familiar with these developments to advise clients effectively.

Part XI: Document Templates and Precedents

Chapter 46: Comprehensive Document Library

46.1 Introduction

This Chapter provides a comprehensive library of document templates and precedents for land transactions in East Africa. These templates are for guidance purposes only and should be adapted to the specific circumstances of each transaction and jurisdiction. Legal practitioners should always ensure that documents comply with the applicable law and are tailored to the client's needs.

46.2 Disclaimer

These templates are provided for educational and guidance purposes only. They do not constitute legal advice. Legal practitioners should:

(a) Adapt the templates to the specific circumstances

(b) Ensure compliance with applicable law

(c) Seek specialist advice where necessary

(d) Update the templates as the law changes

Template 1: AGREEMENT FOR SALE OF LAND

AGREEMENT FOR SALE OF LAND

THIS AGREEMENT is made on the ____ day of ___________, 20__

BETWEEN

[NAME OF VENDOR], of [ADDRESS], [IDENTIFICATION NUMBER], (hereinafter called "the Vendor")

AND

[NAME OF PURCHASER], of [ADDRESS], [IDENTIFICATION NUMBER], (hereinafter called "the Purchaser")

WHEREAS:

A. The Vendor is the registered proprietor of [DESCRIPTION OF LAND], comprised in [LAND REFERENCE NUMBER/PLOT NUMBER], situate at [LOCATION], and held under [TENURE] title number [TITLE NUMBER] (hereinafter called "the Property").

B. The Vendor has agreed to sell and the Purchaser has agreed to purchase the Property for the consideration and on the terms and conditions hereinafter appearing.

NOW THIS AGREEMENT WITNESSETH as follows:

1. SALE AND PURCHASE

The Vendor shall sell and the Purchaser shall purchase the Property free from encumbrances (save as hereinafter mentioned) together with all rights, easements, and appurtenances thereto belonging.

2. PURCHASE PRICE

The purchase price shall be [AMOUNT IN WORDS] ([AMOUNT IN FIGURES]) [CURRENCY], payable as follows:

(a) A deposit of [AMOUNT] upon execution of this Agreement.

(b) The balance of [AMOUNT] upon completion.

3. COMPLETION

Completion shall take place on the ____ day of ___________, 20__ or such other date as the parties may agree in writing.

4. TITLE

The Vendor shall prove title by production of:

(a) The Certificate of Title

(b) A certified copy of the register

(c) Such other documents as may be necessary

5. REPRESENTATIONS AND WARRANTIES

The Vendor represents and warrants that:

(a) The Vendor is the sole and absolute owner of the Property.

(b) The Property is free from all encumbrances, charges, and liens (except as disclosed).

(c) There are no pending disputes or litigation affecting the Property.

(d) The Vendor has the full power and authority to sell the Property.

6. SPOUSAL CONSENT

[Where applicable] The Vendor's spouse, [NAME], has consented to this transaction in writing.

7. CONDITIONS PRECEDENT

This Agreement is subject to the following conditions precedent:

(a) [List conditions]

8. DEFAULT

In the event of default by either party:

(a) The defaulting party shall pay damages.

(b) The innocent party may rescind this Agreement.

(c) The Vendor may forfeit the deposit.

9. DISPUTE RESOLUTION

Any dispute arising from this Agreement shall be resolved through:

(a) Negotiation

(b) Mediation

(c) Arbitration in accordance with the [Arbitration Act]

10. GOVERNING LAW

This Agreement shall be governed by the laws of [COUNTRY].

11. GENERAL

(a) Notices: All notices shall be in writing.

(b) Entire Agreement: This Agreement constitutes the entire agreement.

(c) Variation: This Agreement may only be varied in writing.

(d) Assignment: Neither party may assign without consent.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first above written.

SIGNED by the Vendor: _______________________

Name: _______________________

Date: _______________________

In the presence of:

Witness Name: _______________________

Witness Signature: _______________________

Witness Address: _______________________

SIGNED by the Purchaser: _______________________

Name: _______________________

Date: _______________________

In the presence of:

Witness Name: _______________________

Witness Signature: _______________________

Witness Address: _______________________

Template 2: TRANSFER OF LAND

TRANSFER OF LAND

THIS TRANSFER is made on the ____ day of ___________, 20__

BY

[NAME OF TRANSFEROR], of [ADDRESS], [IDENTIFICATION NUMBER], the registered proprietor of the land hereinafter described (hereinafter called "the Transferor")

TO

[NAME OF TRANSFEREE], of [ADDRESS], [IDENTIFICATION NUMBER] (hereinafter called "the Transferee")

IN CONSIDERATION of the sum of [AMOUNT IN WORDS] ([AMOUNT IN FIGURES]) [CURRENCY] paid by the Transferee to the Transferor (the receipt whereof the Transferor hereby acknowledges)

THE TRANSFEROR hereby transfers to the Transferee ALL THAT piece of land [DESCRIPTION], comprised in [LAND REFERENCE NUMBER/PLOT NUMBER], situate at [LOCATION], and held under [TENURE] title number [TITLE NUMBER] (hereinafter called "the Property")

TOGETHER with all buildings, improvements, rights, easements, and appurtenances thereto belonging.

SUBJECT to the encumbrances (if any) specified in the Schedule hereto.

THE TRANSFEROR hereby covenants with the Transferee that the Transferor has the full power and authority to transfer the Property and that the Transferee shall quietly enjoy the Property without lawful interruption from the Transferor or any person claiming through the Transferor.

IN WITNESS WHEREOF the Transferor has executed this Transfer on the date first above written.

SIGNED by the Transferor: _______________________

Name: _______________________

Date: _______________________

In the presence of:

Witness Name: _______________________

Witness Signature: _______________________

Witness Address: _______________________

SCHEDULE OF ENCUMBRANCES

[If none, state "None"]

Template 3: MORTGAGE DEED

MORTGAGE DEED

THIS MORTGAGE is made on the ____ day of ___________, 20__

BY

[NAME OF MORTGAGOR], of [ADDRESS], [IDENTIFICATION NUMBER], the registered proprietor of the land hereinafter described (hereinafter called "the Mortgagor")

TO

[NAME OF MORTGAGEE], of [ADDRESS], [IDENTIFICATION NUMBER] (hereinafter called "the Mortgagee")

IN CONSIDERATION of the sum of [AMOUNT IN WORDS] ([AMOUNT IN FIGURES]) [CURRENCY] lent by the Mortgagee to the Mortgagor (the receipt whereof the Mortgagor hereby acknowledges)

THE MORTGAGOR hereby mortgages to the Mortgagee ALL THAT piece of land [DESCRIPTION], comprised in [LAND REFERENCE NUMBER/PLOT NUMBER], situate at [LOCATION], and held under [TENURE] title number [TITLE NUMBER] (hereinafter called "the Property")

TO SECURE the repayment of the principal sum of [AMOUNT] together with interest at the rate of [RATE] per annum, payable as follows:

[REPAYMENT TERMS]

THE MORTGAGOR hereby covenants with the Mortgagee as follows:

1. To repay the principal sum and interest in accordance with the repayment terms.

2. To maintain the Property in good condition.

3. To insure the Property against fire and other risks.

4. Not to sell, lease, or otherwise dispose of the Property without the Mortgagee's consent.

5. To pay all rates, taxes, and charges.

THE MORTGAGEE shall have the following remedies in case of default:

1. To enter into possession of the Property. 2. To sell the Property. 3. To appoint a receiver. 4. To foreclose.

THE MORTGAGOR shall have the right to redeem the Property upon repayment of the principal sum, interest, and all other amounts due.

IN WITNESS WHEREOF the Mortgagor has executed this Mortgage on the date first above written.

SIGNED by the Mortgagor: ______________________

Name: ______________________

Date: ______________________

In the presence of:

Witness Name: ______________________

Witness Signature: ________________________

Witness Address: ________________________

[Where applicable]

CONSENT OF SPOUSE

I, [NAME OF SPOUSE], spouse of the Mortgagor, hereby consent to this mortgage.

Signed: ________________________

Date: ________________________

Template 4: LEASE AGREEMENT

LEASE AGREEMENT

THIS LEASE is made on the ____ day of ___________, 20__

BETWEEN

[NAME OF LESSOR], of [ADDRESS], [IDENTIFICATION NUMBER], the registered proprietor of the premises hereinafter described (hereinafter called "the Lessor")

AND

[NAME OF LESSEE], of [ADDRESS], [IDENTIFICATION NUMBER] (hereinafter called "the Lessee")

WHEREAS the Lessor has agreed to let and the Lessee has agreed to take the premises hereinafter described for the term and at the rent hereinafter mentioned.

NOW THIS LEASE WITNESSETH as follows:

1. PREMISES

The Lessor hereby lets to the Lessee ALL THAT [DESCRIPTION OF PREMISES], situate at [LOCATION] (hereinafter called "the Premises").

2. TERM

The term of this Lease shall be [NUMBER] years, commencing on the ____ day of ___________, 20__ and ending on the ____ day of ___________, 20__.

3. RENT

The rent shall be [AMOUNT IN WORDS] ([AMOUNT IN FIGURES]) [CURRENCY] per [MONTH/YEAR], payable in advance on the [DAY] day of each [MONTH/YEAR].

4. REVIEW

The rent shall be reviewed every [NUMBER] years, based on [METHOD OF REVIEW].

5. USE

The Premises shall be used for [PERMITTED USE] only.

6. REPAIRS

(a) The Lessor shall be responsible for [STRUCTURAL REPAIRS].

(b) The Lessee shall be responsible for [INTERNAL REPAIRS].

7. INSURANCE

[Specify insurance requirements]

8. ASSIGNMENT AND SUBLETTING

The Lessee shall not assign or sublet without the Lessor's prior written consent.

9. TERMINATION

This Lease may be terminated by:

(a) Expiry of the term

(b) Notice of [NUMBER] months

(c) Forfeiture for breach

10. FORFEITURE

The Lessor may re-enter and forfeit this Lease if:

(a) The rent is unpaid for [NUMBER] days

(b) The Lessee breaches any covenant

(c) The Lessee becomes insolvent

11. DISPUTE RESOLUTION

Any dispute shall be resolved through [METHOD].

12. GOVERNING LAW

This Lease shall be governed by the laws of [COUNTRY].

IN WITNESS WHEREOF the parties have executed this Lease on the date first above written.

SIGNED by the Lessor: ______________________

Name: ______________________

Date: ______________________

In the presence of:

Witness Name: ______________________

Witness Signature: ______________________

Witness Address: ______________________

SIGNED by the Lessee: ______________________

Name: ______________________

Date: ______________________

In the presence of:

Witness Name: ______________________

Witness Signature: ______________________

Witness Address: ______________________

Template 5: POWER OF ATTORNEY

POWER OF ATTORNEY

I, [NAME], of [ADDRESS], [IDENTIFICATION NUMBER], hereby appoint [NAME OF ATTORNEY], of [ADDRESS], [IDENTIFICATION NUMBER], to be my attorney.

I authorize my attorney to act on my behalf in all matters relating to [SPECIFY PURPOSE], including but not limited to:

1. To sell, transfer, mortgage, lease, or otherwise dispose of my property [DESCRIPTION].

2. To sign all necessary documents.

3. To receive all monies.

4. To do all other acts necessary to give effect to this Power of Attorney.

This Power of Attorney shall [continue until revoked / expire on the ____ day of __________, 20__].

IN WITNESS WHEREOF I have executed this Power of Attorney on the ____ day of __________, 20__.

SIGNED by the Donor: ______________________

Name: ______________________

Date: ______________________

In the presence of:

Witness Name: ______________________

Witness Signature: ______________________

Witness Address: ______________________

[Where required]

ACKNOWLEDGMENT BEFORE COMMISSIONER FOR OATHS / NOTARY PUBLIC

I, [NAME], Commissioner for Oaths / Notary Public, do hereby certify that [NAME OF DONOR] personally appeared before me and acknowledged the execution of this Power of Attorney.

Signed: ______________________

Date: ______________________

Seal: ______________________

Template 6: CAVEAT

CAVEAT

TO: The Registrar of Titles, [LOCATION]

I, [NAME], of [ADDRESS], [IDENTIFICATION NUMBER], hereby lodge this caveat in respect of [DESCRIPTION OF LAND], comprised in [LAND REFERENCE NUMBER/PLOT NUMBER], situate at [LOCATION], and held under [TENURE] title number [TITLE NUMBER].

I claim an interest in the said land as [SPECIFY NATURE OF INTEREST, e.g., purchaser under agreement for sale, mortgagee, etc.].

I request that no dealing with the said land be registered without notice to me.

The grounds of my claim are: [STATE GROUNDS]

DATED this ____ day of __________, 20__.

Signed: ______________________

Name: ______________________

Address: ______________________

Template 7: STATUTORY DECLARATION

STATUTORY DECLARATION

I, [NAME], of [ADDRESS], [IDENTIFICATION NUMBER], do solemnly and sincerely declare as follows:

1. [State facts]
2. [State facts]
3. [State facts]

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the [Oaths Act].

Declared at [LOCATION] this ____ day of __________, 20__.

Before me:

[COMMISSIONER FOR OATHS / NOTARY PUBLIC]

Signature: ______________________

Name: ______________________

Date: ______________________

Seal: ______________________

DECLARANT:

Signature: ______________________

Name: ______________________

Date: ______________________

Template 8: APPLICATION FOR CONSENT TO TRANSFER

APPLICATION FOR CONSENT TO TRANSFER

TO: [UGANDA LAND COMMISSION / DISTRICT LAND BOARD / COMMISSIONER FOR LANDS / NATIONAL LAND COMMISSION]

I, [NAME], of [ADDRESS], [IDENTIFICATION NUMBER], the registered proprietor of [DESCRIPTION OF LAND], comprised in [LAND REFERENCE NUMBER/PLOT NUMBER], situate at [LOCATION], and held under [TENURE] title number [TITLE NUMBER], hereby apply for consent to transfer the said land to [NAME OF TRANSFEREE], of [ADDRESS], [IDENTIFICATION NUMBER].

The proposed transfer is for [STATE PURPOSE].

I attach the following documents: 1. Copy of the Certificate of Title 2. Copy of the Transfer 3. Valuation report 4. [Other documents]

I declare that the information provided is true and correct.

DATED this ____ day of ___________, 20__.

Signed: ______________________

Name: ______________________

Address: ______________________

Template 9: NOTICE OF MOTION

IN THE [HIGH COURT / MAGISTRATE'S COURT / LAND TRIBUNAL] AT [LOCATION]

[CASE NUMBER]

BETWEEN

[NAME OF APPLICANT] .... APPLICANT

AND

[NAME OF RESPONDENT] .... RESPONDENT

NOTICE OF MOTION

TAKE NOTICE that this Honourable Court will be moved on the ____ day of ___________, 20__ at [TIME] or so soon thereafter as Counsel may be heard for an order [STATE ORDERS SOUGHT].

AND FURTHER TAKE NOTICE that the application is supported by the affidavit of [NAME] sworn on the ____ day of __________, 20__ and the grounds set out therein.

DATED this ____ day of ___________, 20__.

[NAME OF ADVOCATE]

Advocate for the Applicant

Address: _______________________

Template 10: AFFIDAVIT IN SUPPORT

IN THE [HIGH COURT / MAGISTRATE'S COURT / LAND TRIBUNAL] AT [LOCATION]

[CASE NUMBER]

BETWEEN

[NAME OF APPLICANT] .... APPLICANT

AND

[NAME OF RESPONDENT] .... RESPONDENT

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

I, [NAME], of [ADDRESS], [IDENTIFICATION NUMBER], do make oath and state as follows:

1. I am the Applicant / [STATE CAPACITY] and I am duly authorized to make this affidavit.

2. [State facts in numbered paragraphs]

3. [State facts]

4. [State facts]

5. I verily believe that the facts stated herein are true.

SWORN at [LOCATION] by the said [NAME] this ____ day of __________, 20__.

Before me:

[COMMISSIONER FOR OATHS]

Signature: _______________________

Name: _______________________

Date: _______________________

Seal: _______________________

DEPONENT:

Signature: _______________________

Name: _______________________

Date: ______________________

Glossary of Terms

This glossary was prepared by the publisher to accompany the volume and covers terms of art used across the comparative text; jurisdiction-specific statutory definitions should be verified against the relevant Act.

Adverse Possession — Acquisition of title to land by long, open, continuous and exclusive possession inconsistent with the true owner's title, for the statutory limitation period.

Bona Fide Occupant — A person who, in Ugandan law, occupied or utilised land unchallenged by the registered owner or agent for twelve years or more before the 1995 Constitution, or was settled on land by government or the registered owner.

Busulu — Nominal annual ground rent payable by a lawful or bona fide occupant to a registered mailo landowner in Uganda.

Caveat — A formal notice lodged on a land register warning that no dealing with the land should be registered without notice to the caveator, used to protect an unregistered or disputed interest.

Certificate of Title — The document issued under a Torrens-style registration system conclusively evidencing the registered proprietor's title, subject to statutory exceptions such as fraud.

Community Land — Land held, managed and used by specific communities under Kenya's Community Land Act, 2016, replacing the former trust land category.

Customary Tenure — Land tenure governed by the customs, norms and practices of a particular community, generally involving communal or family-based rights of a kind that predate statutory registration systems.

Easement — A right attached to land (the dominant tenement) to use land belonging to another (the servient tenement) for a specific purpose, such as a right of way.

Eminent Domain — The power of the state to compulsorily acquire private land for a public purpose, subject to constitutional requirements of prompt and adequate compensation.

Equitable Interest — An interest in land recognised and enforced in equity rather than at common law, arising from informal arrangements such as a contract for sale or a trust.

Freehold — The most extensive form of land tenure, involving ownership without limit of time, subject to statutory and planning controls.

Lawful Occupant — In Uganda, a person who had occupied land under customary tenure but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring title, or a purchaser of the occupancy rights of such a person.

Leasehold — Tenure for a fixed term of years at a rent, subject to the terms of the lease and reversion to the lessor on expiry.

Mailo Tenure — A form of land tenure unique to Uganda, originating in the 1900 Buganda Agreement, under which registered mailo owners hold land subject to the rights of lawful and bona fide occupants.

Mortgage — A conveyance or charge of an interest in land as security for a debt, giving the mortgagee rights including a power of sale on default, subject to statutory procedural protections for the mortgagor.

Power of Sale — A mortgagee's statutory or contractual right to sell the mortgaged property on the mortgagor's default, to be exercised in good faith and so as to obtain the best price reasonably obtainable.

Profit à Prendre — A right to enter another's land and take some part of the natural produce of that land, such as timber, fish or minerals.

Redemption — The mortgagor's equitable right to recover the mortgaged property free of the mortgage upon payment of the debt and any interest and costs due, even after the contractual date for repayment has passed.

Registration of Titles — A Torrens-style system under which the register, rather than the underlying chain of documents, is the definitive record of title, intended to give purchasers security of title on the face of the register.

Restrictive Covenant — An obligation attached to land restricting the use to which the land may be put, capable in certain circumstances of binding successors in title to the burdened land.

Sectional Title / Strata Title — A system of registration allowing separate ownership of individual units within a multi-unit building (such as an apartment block), combined with shared ownership of common property.

Spousal Consent — A statutory requirement in several East African jurisdictions that a spouse consent to a transaction affecting family or matrimonial land before it may be validly registered.

Torrens System — A system of land registration, named for its South Australian originator, under which the state guarantees the accuracy of the register and title is conferred by registration rather than by the underlying deed.

Village Land — Land falling within the jurisdiction of a registered village council in Tanzania under the Village Land Act, 1999, held and administered on behalf of the village community.

Subject Index

This index references chapters in which each term appears in the typeset text. Page-numbered indexing will be finalised once the volume is paginated for print.

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About the Author

Isaac Christopher Lubogo is the founder of Suigeneris Consultancy and Suigeneris Publishers, Kampala. He lectures in law at five Ugandan universities and is the author of more than seventy books spanning corporate and commercial law, land and property law, constitutional theory, and legal practice, including the multi-volume Objection My Lord: Legal Practice Demystified series.

His accolades include the Africa Law Tech Award (2022) and the SMEGAfrica Excellence Scholar Award (2025). His scholarship and practice guides are widely used across Ugandan law schools, the Law Development Centre, and commercial legal practice throughout the East African Community.

Also by the Author

- Land Transactions in East Africa: A Comparative Legal Practice Guide, Volume One (this volume)
- Objection My Lord: Legal Practice Demystified, Volume 1 — Family Law & Practice
- Objection My Lord: Legal Practice Demystified, Volume 2 — Criminal Law & Practice
- Objection My Lord: Legal Practice Demystified, Volume 3 — Civil Procedure & Evidence
- Objection My Lord: Legal Practice Demystified, Volume 4 — Corporate & Commercial Law
- The Law on Professional Malpractice in Uganda
- The Law of Sports and Entertainment in Uganda
- Media Law and Policy in Uganda
- Cyber Law in Uganda
- The Law of Oil and Gas in Uganda
- Sustainable Environmental Law

Colophon

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