AN EVALUATION OF THE EFFICACY OF LAW IN ADDRESSING FRAUD IN THE PROCESSING OF EXTENSION AND RENEWAL OF LEASES IN KENYA

by James Muthui

Submission date: 06-Jun-2020 01:26PM (UTC+0300)
Submission ID: 1338861208
File name: James_muthui_law_3.docx (318.65K)
Word count: 37682
Character count: 226032

UNIVERSITY OF NAIROBI

SCHOOL OF LAW

AN EVALUATION OF THE EFFICACY OF LAW IN ADDRESSING FRAUD IN THE PROCESSING OF EXTENSION AND RENEWAL OF LEASES IN KENYA

A PROJECT PAPER SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF DEGREE OF MASTER OF LAWS

MUTHUI JAMES KAMANJA

REG. NO: G62/7243/2017

JUNE 2020

DECLARATION

DECLARATION BY STUDENT

This research thesis is my original work and has not been presented nor is it currently being presented for a degree in any other University. No part of this thesis may be reproduced without the prior written permission of the author and/or the University of Nairobi

JAMES KAMANJA MUTHUI

REGISTRATION NO: G62/7243/2017

Signature:..... Date:.....

DECLARATION BY SUPERVISOR

I hereby certify that this research was undertaken under my supervision and submitted for examination with my approval as University supervisor

Supervisor's name: **Dr. COLLINS ODOTE**

Signature..... Date .....

ACKNOWLEDGMENT

I am deeply grateful to my supervisor Dr. Collins Odote for dedicating his time and wisdom to guide me through this rigorous process of research and for his positive criticism, patience and encouragement. Without his guidance and insights, the quality, form and content of this work would not have been realised.

I am also deeply grateful to my family for their love, understanding and support.

DEDICATION

To my beloved family: Esther, Benjamin and Irene.

TABLE OF CASES

1. Anthony Otiende Otiende v Public Service Commission & 2 others [2016] eKLR
2. Chemey Investment Limited v Attorney General & 2 others[2018] eKLR
3. Commissioner of Lands -V- Kunste Hotel Ltd KLR (E&L) 1 249
4. Francis Nyagah Njeru v Director of Public Prosecution & 2 others [2017] eKLR
5. Insurance Company of East Africa Ltd v Attorney General & others Mombasa High Court Civil Case No. 151 of 1997, [1997] LLR 749
6. In the Matter of the National Land Commission [2015] eKLR
7. Karisa Chengo, Jefferson Kalama Kengha & Kitsao Charo Ngati v Republic [2015] eKLR.
8. Karume Investments Limited v Kenya Shell Limited & The Commissioner of Lands Civil Appeal No. 201 of 2008
9. Kenya National Highway Authority v. Shalien Masood Mughal & 5 others (2017) eKLR
10. Kenya Ports Authority v Commissioner of Lands and another Mombasa HCCC No. 124 of 2001, [2001] LLR 3367
11. National Land Commission v Afrison Export Import Limited & 10 others [2019] eKLR.
12. Niaz Mohamed Jan Mohamed v. Commissioner for Lands & 4 Others [1996] eKLR
13. Republic v Director of Survey & 2 others Ex-parte Sayani Investments Limited [2016] eKLR
14. Republic vs The Permanent Secretary Ministry of Public Works & Housing Tom Maliachi Sitima [2014] eKLR
15. Serah Mweru Muhu v Commissioner of Lands and 2 others [2014] eKLR
16. The Chief Land Registrar & 4 others v Nathan Tirop Koech and 4 others[2018] eKLR

TABLE OF LEGISLATION

Constitution of Kenya, 2010.

Crown Lands Ordinance.

Land Act No 6 of 2012.

Land Registration Act No. 3 of 2012.

National Land Commission Act No 5 of 2012.

ABBREVIATIONS

CLO	- Crown Lands Ordinance.
CoK 2010	- Constitution of Kenya, 2010.
CoL	- Commissioner of Lands.
CoT	- Certificate of Title.
GLA	- Government Lands Act (now repealed).
GoK	- Government of Kenya.
LA	- Land Act No 6 of 2012.
LRA	- Land Registration Act No. 3 of 2012.
MoLPP	- Ministry of Lands.
NLCA	- National Land Commission Act No 5 of 2012.
NLP	- National Land Policy.
PEV	- Post-Election Violence.
RDA	- Registration of Documents Act (now repealed).
RLA	- Registered Land Act (now repealed).
RTA	- Registration of Titles Act (now repealed).

TABLE OF CONTENTS

CHAPTER ONE: INTRODUCTION

1.1 Background of the study

Land is an important resource in Kenya.[1] It has always played a fundamental role in the social, economic and political matters of Kenyans.[2] Activities such as agriculture, tourism and industrial production, are carried on land. Natural resources such as fisheries, forests, minerals, water, wildlife and mostly recently oil and gas are found on land and offshore. Some communities depend on land for their cultural and religious activities.[3] Religious groups such as Christians, Muslims and Hindus, rely on land for the construction of places of worship, being churches, mosques and temples. Community gatherings and deliberations have always taken place on land.[4] Land is therefore, not only a factor of production but also a value through which intra and intergenerational economic, social, and spiritual relations are modelled.

Land is nevertheless a finite resource. It does not expand or grow. On the other hand, Kenya's population has continued to grow[5] resulting in increased pressure on land. In order to balance the competing interests and societal needs, it is imperative that Kenya has an efficient and reliable legal land management system. An entire chapter in the Constitution of Kenya, 2010 (CoK 2010), has been dedicated to land, the environment and natural resources.[6] The Constitution requires that

---

[1] John Haberson, 'Land Reforms and Politics in Kenya, 1954-70' (1971) Journal of Modern Studies Vol 9(2) 231, 231; Simon FR Coldham, 'Land-Tenure Reform in Kenya: The Limits of Law' (1979) 17 Journal of Modern African Studies 615, 617.

[2] Stephen Kabera Karanja, 'Land Restitution in the Emerging Kenyan Traditional Justice Process' (2010) Nordic Journal of Human Rights Vol 28(2) 177-201, 177; Celestine Nyamu Musembi and Patricia Kameri-Mbote, 'Mobility, Marginality and Tenure Transformation in Kenya: Explorations of Community Property Rights in Law and Practice' (2013) Nomadic Peoples Vol 17(1) 5-32, 6.

[3] Joseph Kieyah, 'Indegenous People's Land Rights in Kenya: A Case Study of the Massai and Ogiek People' (2007) Vol 15(3) Penn State Environment Law Review 397, 399. The author using Maasai and Ogiek communities as case studies underlines the importnace of land and forests to indigenous communities in Kenya before and after colonialism.

[4] The Mijikenda (a community made of nine closely related peoples (namely Chonyi, Digo, Duruma, Giriama, Jibana, Kambe, Kauma, Rabai and Ribe) in the coastal region of Kenya, for instance, depends on the Kaya forest for its cultural and religious ceremonies. See David P. Bresnahan, *Sacred Spaces, Political Authority, and the Dynamics of Tradition in Mijikenda History*: A Thesis Presented to the Faculty of the College of Arts and Sciences of Ohio University in Partial Fulfillment of the Requirements for the Degree Master of Arts (June 2010) 7.

[5] According to the Kenya National Bureau of Statistics Economic Survey 2017, Kenya's population steadily grew from 40.7 million people to 45.4 million people in Four years. The population was 40.7 million in the year 2012, 41.8 million in 2013, 43 million in 2014, 44.2 million in 2015 and 45.4 million in 2016.

[6] Chapter five of the Constitution.

land in Kenya be and managed in an equitable, efficient, productive and sustainable manner.[7] It classifies land[8] into three categories, namely public,[9] community[10] and private[11] land.

There is an interface between land tenure[12] and land use. For this reason, it is imperative that the communities do among other things, be understand the tenures adopted in a given society. It is also imperative that the tenures ensure and improve sustainable management of natural resources and the environment and provide security for persons holding land. The Land Act provides for four forms of tenure systems in Kenya,[13] namely freehold, leasehold, customary land rights and such forms of partial interests as the Act and other laws may stipulate, including easements.[14]

In the case of freehold, the holder has a right to exploit and deal with land in perpetuity subject to the rights of others and regulatory controls.[15] Freehold is the utmost interest one can have on land. It gives the holder complete rights in the land for life. The holders of freeholds can therefore bequeath their interest in the land to their heirs. There are restricted freeholds, which constrain the use of the land, for instance for farming purposes only.

Leasehold tenure on the other hand denotes the rights or interest in land granted by a juridical persona with ultimate or radical title to land, called a lessor, for a period subject to payment of rent to the grantor and specified conditions.[16] The lessor can be an individual or corporate entity in case of private property, the Government in the case of public land or a community in case of community land. This study relates to leases in respect of Government land.

Before the promulgation of the Constitution 2010, the term for most leases from the Government was 9999 and 999 years for agricultural land, 99 years for urban plots and 33-years in respect of

---

[7] The Constitution of Kenya, 2010 Article 60(1).
[8] ibid a 61.
[9] ibid a 62.
[10] ibid a 63.
[11] ibid a 64.
[12] The term "tenure" generally refers to the manner in which individuals or groups of people within a community or society enjoy rights of access to land and the conditions for such enjoyment.
[13] Act No 6 of 2012 s 5.
[14] Government of Kenya, *Sessional Paper No 3 of 2009 on National Land Policy* (August 2009), ss 76 and 79.
[15] ibid s 76.
[16] ibid s 79.

what was in the previous land laws regime urban trust land.[17] The Constitution of Kenya 2010, however automatically converted the 9999 and 999 years leases granted to non-citizens to 99-year leases.[18] At the expiry of the term of lease in respect of Government land, the land reverts to the Government and can be re-allocated if not required for use either by the national or county Government. A lessee can however, apply for an extension or renewal of the lease particularly where such lessee wishes to re-develop the property and the term of the lease is about to expire or the remaining period is not sufficient to recoup their investments. The Government can grant another term of lease to the lessee either on the same terms and conditions or on different terms.[19] An extension of the lease is the grant of another term on the same conditions before the expiry of the first term while a renewal of lease is the grant of another lease under different terms and conditions or after the expiry of the original lease.[20]

Leasehold tenure is flexible.[21] It can be terminated, extended, renewed or revert to the national or county Government upon expiry. This flexibility can be a useful device to help realize wider societal goals such as planned development, conservation, justice and sustainable land use, thus advancing fiscal, communal and political stability of the country.

Such stability has however not been achieved in Kenya. The land question in Kenya is a sensitive issue.[22] It has caused violent conflict notably during the Post-Election Violence (PEV) of 1991-1992 and 2007 -2008.[23] Land has been at the heart of colonial and postcolonial history in Kenya.

---

[17]Government of Kenya, *Report of the Task Force Investigating the Processing of Extension and Renewal of Leases' presented to the Cabinet Secretary Ministry of Lands and Physical Planning* (Government Printer, Nairobi 2017) 18. The taskforce is commonly referred to the Mwathane Taskforce after the name of its Chairman (Mwathane Taskforce).

[18] Article 65 of the Constitution.

[19]Mwathane Taskforce (n 17) 18.

[20] ibid 19.

[21] Government of Kenya, *Report of the Commission of Inquiry into the Land Law System of Kenya on Principles of a National Land Policy Framework Constitutional Position of Land and New Institutional Framework for Land Administration* (Government Printer, Nairobi 2002) 52. The Commission is commonly referred to as the Njonjo Land Commission after the name of its Chairman, former Attorney General of Kenya Charles Njonjo (Njonjo Land Commission).

[22] Patricia Kameri-Mbote, 'The Land Question in Kenya: Legal and Ethical Dimensions' (2009) International Environmental Law Research Centre< http://www.ielrc.org/content/a0910.pdf>accessed on 28 November 2017.

[23]Karanja (n 2) 178.

It was a key motivation in the struggle for independence and politics in Kenya.[24] Charles Hornsby observes that land is 'a key fault line' in Kenya.[25] The 'fault line' in part has to do with colonialism and the legal regime introduced by the colonialists with a view to promote the interests of settlers.

More than Fifty-Four years after independence, there are still shortcomings in the legal regime. The fraudulent processing of extension and renewal of leases even after the promulgation of the Constitution 2010 and enactment on new land laws in the year 2012 demonstrates these shortcomings. On 16th December 2016, the Government issued a moratorium on the processing of extension and renewal of leases. Shortly thereafter, on 27th February 2017 the Cabinet Secretary, Ministry of Lands and Physical Planning (MoLPP) established the Mwathane taskforce to scrutinize the processing of extension and renewal of leases from 2010.[26] The taskforce presented its report in September 2017. The report points out a number of things that have caused or contributed to fraud in the processing of extension and renewal of leases in Kenya, from 2010. These include policy gaps, weak institutional framework in the land management and administration system, sectoral policies, poor governance and limitations in the laws.

1.2 Statement of the Problem

Section 13 of the Land Act, provides for the pre-emptive rights of allotment of land to the immediate past lessees, who are Kenyan Citizens. This applies where the land in question is not required for public purposes. Where a lease is not granted after expiry, the land reverts to the Government. It may therefore be re-allocated as public land. For such allocation, Section 14 of the Land Act requires the National Land Commission (NLC) to issue notice to the public and interested parties[27] offering for allotment, a track or tracts of public land. The notice should include the terms and conditions to be included in the conveyance document and the method of allocation.

---

[24] Colin Leys, *Underdevelopment in Kenya: The Political Economy of Neo-colonialism 1964-1971* (first published 1975, East Africa Educational Publishers Ltd 1994); Mary L. Dudziak, 'Working Toward Democracy: Thurgood Marshall and the Constitution of Kenya' (December 2006) Duke Law Journal Vol 56(3) 721-780.

[25] Charles Hornsby, *Kenya: A History since Independence* (I.B.Tauris London 2012).

[26] Gazette Notice No 1812.

[27] Section 14(5) states that interested parties include adjoining landowners, persons in actual occupation of the land including marginalized communities and groups living in the general vicinity of the public lands being proposed for allocation, and boards of cities and municipalities and town administrators in the geographical vicinity within which the public lands proposed for allocation are located.

The enactment of Sections 13 and 14 of the Land Act was with a view to eliminate corruption in the processing of extension and renewal of leases among other things.[28]The provisions were to make certain acquisition of land rights in a legal and legitimate manner and ensuring that establishment of private rights to land takes into consideration legitimate rights of immediate past lessees. The provisions were also to advance the most advantageous utilization of private land, dissuade land speculation and guarantee developmental control.[29] For the same reasons, Article 65(1) of Constitution of Kenya, 2010 and Section 107(3) of the Land Registration Act prohibit the grant of freehold to people or entities that are not Kenyan citizens. The provisions commuted any leases for any duration longer than 99 years to 99-year leases.[30]

Despite the enactment of Section 13 and 14 of the Land Act, there has been continued fraudulent extension and renewal of leases, thereby undermining the rule of law and funning conflict. Against this setting, the purpose of this study is to assess the efficacy of law in addressing fraud in the processing of extension and renewal of leases in Kenya.

1.3 Research Questions

This study seeks to answer the following questions.

1. What is the genesis and development of leasehold tenure in Kenya?
2. What are the manifestations of fraud with regard to the processing of extensions renewal of leases?
3. Are the legal tools and framework in Kenya adequate for dealing with the problem of corruption in the processing of extensions renewal of leases?
4. What measures can be taken to enhance the detection, prevention and eradication of corruption?

[28] Section 68 of the National Land Policy
[29] Article 60 of the Constitution of Kenya, 2010.
[30] It is interesting to note that Section 8(c) and (d) of the National Land Policy requires that the duration of all leases, without limiting the leases to those granted to non-citizens to be for 99 years.

1.4. Statement of the objectives

The broad objective of this study is to evaluate the efficacy of law in addressing fraud in the processing of extension and renewal of leases in Kenya. The specific objectives of the study are:-

1. To analyze the genesis of leasehold tenure and its development in Kenya.
2. To examine the various manifestations of fraud with regard to the processing of extensions renewal of leases.
3. To assess the adequacy of the legal framework in Kenya in dealing with the problem of corruption in the processing of extensions and renewal of leases.
4. To evaluate measures that can be taken to enhance the detection, prevention and eradication of corruption.

1.5 Hypothesis

This study is premised on the hypothesis that although Kenya has enacted new land laws, the laws are problematic in dealing with fraud in the land sector specifically in relation to extension and renewal of leases. Corrupt individuals are finding ways to circumvent the laws. This is rendering the laws and the NLC ineffective in addressing the question of fraud in the processing of extension and renewal of leases.

1.6 Justification of the study

Some of the 99-year leases granted during the colonial era expired around the year 2010. One would expect that the processing of extension and renewal of leases under the new regime would be in tandem with the provisions of the National Land Policy (NLP) and the CoK 2010. One would also expect that the processing of extension and renewal of leases would be utilised as an opportunity to reconfigure land management in Kenya. Instead, fraud has persisted. More litigation on land matters has ensued from the fraudulent processing of extension and renewal of leases. Chapter 4 discusses examples of these disputes.

Many leases are coming up for renewal thus the need to streamline the process. Increased pressure on land as well as competing uses require an efficient land administration and management system.

This study will therefore inform laws and policies and help address the emotive land question and thus contribute to reduction of land related disputes.

This study is justified on the basis that although there exists a wealth of literature on the land question in Kenya, concerning the occurrence of fraud in the processing of extension and renewal of leases and addressing the gaps in the 2012-land laws, there is an apparent scarcity. Chapter 2 discusses extensively the works of eminent authors such as M.P.K Sorrenson,[31] H.W.O Okoth Ogendo,[32] Tim Mweseli,[33] Karuti Kanyingi,[34] Smokin Wanjala[35] and Patricia Kameri-Mbote.[36] The gaps in the 2012-land laws require an academic appraisal, which should form a basis for policy and legal intervention.

1.7 Theoretical Framework

This study is premised on the collective action theory. This theory was developed theorists like Persson, Rothstein and Teorell[37] Bauhr and Nasiritousi[38] Mungiu-Pippidi[39]among others. The theory arose as a criticism of the principal-agent theory's assumption that there are always what Marquette and Peiffer call "principled principals" in society.[40] They argue that corruption is a collective action problem particularly in the milieu of systemic corruption. They therefore blame

---

[31] M.P.K Sorrenson, *Settlement in Kenya: Origins of European Settlement in Kenya* (Nairobi O.U.P 1968).
[32] H.W.O. Okoth Ogendo, *Tenants of the Crown: Evolution of the Agrarian Law and Institutions in Kenya* (ACTS Press, Nairobi 1991).
[33] Tim Mweseli, 'The Centrality of land in Kenya: Historical Background and Legal Perspective' in Smokin Wanjala (ed) *Essays on Land Law: The Reform Debate in Kenya* (Faculty of Law, University of Nairobi, 2000) 3-24.
[34] Karuti Kanyingi, 'Beyond the Colonial Legacy: The Land Question, Politics and Constitutionalism in Kenya' in Smokin Wanjala (ed) *Essays on Land Law: The Reform Debate in Kenya* (Faculty of Law, University of Nairobi, 2000) 45-60.
[35] Smokin C Wanjala, 'Land Ownership and Use in Kenya: Past, Present and Future' in Smokin Wanjala (ed) *Essays on Land Law: The Reform Debate in Kenya* (Faculty of Law, University of Nairobi, 2000).
[36] Kameri-Mbote (n 22).
[37] Anna Persson, Bo Rothstein and Jan Teorell, 'Why Anticorruption Reforms Fail-Systemic Corruption as a Collective Action Problem' (2013) Governance: An International Journal of Policy, Administration, and Institutions 26(3), 449–471.
[38] Monika Bauhr and Naghmeh Nasiritousi, 'Why Pay Bribes ? Collective Action and Anticorruption Efforts' [2011] QOG - University of Gothenbourg<https://www.qog.pol.gu.se/digitalAssets/1357/1357856_2011_18_bauhr_nasiritousi.pdf>accessed on 28 August 2018
[39] Alina Mungiu-Pippidi, Masa Loncaric, Bianca Vaz Mundo, Ana Carolina Sponza Braga, Michael Weinhardt et el 'Contextual Choices in Fighting Corruption: Lessons Learned' (2011)< https://www.oecd.org/countries/vietnam/48912957.pdf> accessed on 28 August 2018
[40] Heather Marquette & Caryn Peiffer, 'Collective Action and Systemic Corruption' (2015) University of Warsaw Workshop Paper 19,< https://ecpr.eu/Filestore/PaperProposal/b5944a31-85b6-4547-82b3-0d4a74910b07.pdf> accessed 28 August 2018 .

wrong theoretical approach and specifically what Person, Rothstein and Teorell term as 'a theoretical mischaracterization of the problem of systemic corruption'[41] for the letdown of many anti-corruption efforts.

Mancur Olson[42] work regarding the collective action problem is the basis of Collective action theory. Olson argues that in society, there are private goods provided along collective goods. Private goods are those goods that are excludable in that one can exclude others from enjoying or consuming the goods. There are however, collective goods that are not excludable in that one cannot exclude members of the group from enjoying or consuming the goods even if they do not contribute to the production of the collective goods. Olson opines that when one analyzes the provision of the collective goods from an individual's perspective, there is reduced incentive for individuals to optimize the provision of the shared goods. The reason being that they cannot be excluded from enjoying the collective goods even if they do not contribute to the production of the collective goods. He calls this free riding on the efforts of others. He opines that free riding is pervasive in society and that it is more problematic in large groups. If everybody in the group acts this way, Olson opines that very little production of the collective good would be achieved hence the collective good is doomed. Free-riding gives rise to the collective action problem.

Marquette and Peiffer[43] argue that good quality governance free of corruption is a public good. When individuals engage in corrupt practices, they deny the group from having a good government and a corrupt free environment. This behavior arises from individuals putting their interests ahead of the interests of the public. Public resources or rents are then misappropriated and rendered unavailable to the public. Marquette and Peiffer put it that '[c]orruption can lead to the bankruptcy of the state or at least reduce its ability to provide public services effectively and efficiently'.[44]

The collective action theory calls for collective action and approach to anti-corruption programs. For instance, some of the measures taken by the Transparency International include arrangements

[41] Persson (n 36) 450.
[42] Mancur Olson, *The Logic of Collective Action Cambridge* (1965) <https://books.google.nl/books?id=jv8wTarzmsQC> accessed on 28 August 2018
[43] Marquette (n 40) 11.
[44] ibid 4

between governments and the private entities to desist from bribery and complicity in procurement, monitoring systems and involving independent oversights from civil society groups.[45]

Some authors have criticized the collective action theory, mainly on two accounts. First, that it misunderstands the principal-agent theory. Secondly that contrary to the collective action theorists claim, it is not essentially totally irreconcilable with the principal-agent theory.[46]Both theories are based on the notion that individuals exercise their rational thinking when faced with issues such as corruption.

This study argues that contextualization of corruption reveals that collective action approaches advanced by the collective action theory can be very useful in identifying, preventing and eradicating or minimizing corruption. The study does not diminish the importance of the enhancement of monitoring and punishment advanced by the principal-agent theory. The study highlights and critically discusses the important role the collective action plays in anti-corruption efforts. The following chapters will consider Collective action measures that may be appropriate for the land sector in Kenya based on theory.

1.8 Research Methodology

This part describes the research design, the target population, sampling techniques, the data collection methods and analysis, data presentation and the ethical consideration that have been be applied to this study.

1.8.1 Research Design

This is a descriptive research. Descriptive research is a method of gathering data in order to test hypothesis or to answer questions concerning the subjects in the study.[47] Corruption is a phenomenon that requires an exhaustive approach because it takes place in secrecy without public declaration of one's involvement in it. It is therefore challenging to identify, prevent and eradicate. This study design has been preferred because it is instrumental in the investigation of a phenomenon that requires exhaustive approach. It attempts to describe things like human attitudes, value and behaviour. An evaluation of the efficacy of the new land laws and the manifestations of

[45] https://www.transparency.org/whatwedo/tools/integrity_pacts/5
[46] Marquette (n 40) 11.
[47] Olive Mugenda and Abel Mugenda, *Research Methods* Acts Press (1999) 160.

corruption in the processing of extension and renewal of leases needs such an approach. The study explores individuals' experiences, attitudes, values and beliefs towards corruption. The researcher has therefore considered the design appropriate for the study.

1.8.2 Target Population

Mugenda defines population as 'an entire group of individuals, events or objects having a common observable characteristics'.[48] The target population in this study were officials of the NLC and the MoLPP who are responsible for the processing of extension and renewal of leases.

The researcher drew sample from the accessible population, which is a narrowly defined and manageable part of the target population.[49] For this study, the accessible population was the officials of the NLC, the MoLPP and the Land Fraud Unit based in Nairobi. The researcher arrived at the accessible population on consideration of the large number of officials in the target population spread out in different parts of the country. It would be entail a lot of time, money and personnel to locate and reach each member of the target population. The accessible population was however comparable to the target population as the officials of the NLC and MoLPP carry the same functions in different parts of the country and are usually transferred from one station to the other. The study is confident that the accessible population is representative of the target population.

1.8.3 Sampling

Sampling means the selection of a certain amount of subjects from the accessible population as representative of that population. The NLC and MoLPP have four main departments, namely lands, survey, physical planning and adjudication. The departments have an estimated 100 officials involved in the processing of extension and renewal of leases.

Mugenda opines that for descriptive studies such as this one, a sample size of 10% of the accessible population is enough.[50] Based on the accessible population of an estimated 100 officials involved in the processing of extension and renewal of leases, the target sample size for the study was 30 respondents which represent 30% of the accessible population. The study considered the higher

[48] ibid 9.
[49] ibid 10.
[50] ibid 42

percentage important for purposes of ensuring that the sample reproduces the characteristics of the accessible population to an acceptable degree. Of this target sample of 30, 22 responded to the questionnaire accounting for 73.3%. According to Mugenda,[51] this rate is an excellent rate for examination and reporting. Mugenda also opines that a rate of 50% in responses is adequate while a rate of 60% is good.

The high response rate is attributable to the researcher's efforts in building confidence with the respondents that their responses would be treated with outmost confidentiality, reminding them of the need to fill in and return the questionnaire and offering convenience by collecting the questionnaire from the respondents offices. The researcher also made the efforts to collect the questionnaire from the respondents within a week of distribution. This ensured that the respondents did not put aside the questionnaire and forget to fill it in.

The study therefore collected data from 22 respondents who are officials involved in the processing of extension and renewal of leases, through a semi-structured questionnaire and interview guide. The study used stratified random sampling to select the study sample where the four departments formed the strata. The study considered this approach essential for the reason that it provided an opportunity to select officials in all the departments in the sample to take part in the study. The researcher used simple random sampling to select participants in the study.

1.8.4 Data Collection Technique

The research drew on both primary and secondary data. The researcher collected primary data from 22 respondents being officials of the NLC and MoLPP. The researcher also conducted interviews with officials of Land Fraud Unit. The researcher collected secondary data from existing literature such as books, journals, research papers, reports from commissions and taskforces, annual reports of the anti-corruption agencies, articles, magazines, newspapers, and internet sources that relate to the subject.

1.8.5 Data Collection Tools

The technique of primary data collection used for this study was a semi-structured questionnaire. The questionnaire had closed ended questions for the respondents. The researcher used an

[51] ibid 83.

interview guide to gather information from the Land Fraud Unit officials. The researcher pre-arranged interviews with the respondents to ensure convenience and maximise on the response. This method was appropriate as the study sought to explore individuals' experiences, attitudes, values and beliefs towards corruption. The method gave the study an opportunity to seek deeper information and clarifications from the respondents.

Desk documentary review and internet search method was be used to collect secondary data.

1.8.6 Data Analysis

The researcher used qualitative data analysis for this study and classified responses from the respondents based on themes and patterns cutting across the responses. The researcher used information from the respondents to make conclusions and recommendations. The study has submitted study results in prose and narrative form.

1.8.7 Ethical Considerations

A number of ethical contemplations were applied to this study. The informed consent of the respondents was obtained. The researcher had a brief discussion with each of the respondents to inform them that the purpose of the study is educational study and that any information they provide would be handled with the highest confidentiality. The respondents have been protected by keeping the information given confidential. Anonymity has been utilised in keeping the information confidential through the use of numbers and pseudo names. The researcher personally conducted the face-to-face interviews.

1.9 Scope of the Study

This study is focused on the processing of extension and renewal of leases, over Government land. This is because the processing of extension and renewal of leases over Government land has had many challenges. These challenges have made the process prone to fraud.

1.10 Chapter Breakdown

The study is divided into the following chapters:-

Chapter One – Introduction and background to the study.

This chapter discusses the background and context of the research. It includes the statement of the problem, the purpose and objectives of the research, the research questions and hypothesis, the conceptual framework and the research methodology.

Chapter Two – Analzing the Origin and Development of Leasehold and Corruption in Kenya

This chapter analyses the genesis and historical development of leasehold and its impact on land relations in Kenya. It also analyses the problem of corruption and fraud and its implication on the extension and renewal of leases and assesses efforts that have been undertaken to try and address the problem.

Chapter Three – Evaluating Kenya's Legal Framework for the Processing of Extension and Renewal of Leases.

This chapter examines evaluates the legal framework for processing extension and renewal of leases in Kenya. It first discusses the treatment of leasehold in the pre-2012 land laws and then discusses factors to law accounting for fraud in the processing of extension and renewal of leases.

Chapter Four – Analyzing the Problem and Manifestations of Fraud in the Processing Extension and Renewal of Leases in Kenya:

This chapter examines and analyses the problem and manifestations of fraud in the processing of extension and renewal of leases and demonstrate how the problem has persisted over time.

Chapter Five – Conclusion and Recommendations

This chapter summarises the conclusions from preceding chapters and makes recommendations on measures that can be taken to enhance the identification, prevention and eradication of corruption.

CHAPTER TWO: ANALYZING THE ORIGIN AND DEVELOPMENT OF LEASEHOLD AND CORRUPTION IN KENYA

2.1 Introduction

For background and context in discussing the topic of the study, this chapter reviewed literature on land and corruption in Kenya for situational analysis. The situational analysis focussed on assessing the origin, development and treatment of leasehold and its impact in land relations in Kenya, assessing the problem of corruption and fraud and its implication on the extension and renewal of leases and assessing efforts that have been undertaken to try to address the land question.

2.2 The Doctrines of Tenure and Estates

Today's attitude to land ownership and land relations is largely that property rights are absolute and their subsistence guaranteed by law.[1] This attitude is historically influenced by the feudal times when division of land was based on space. The feudal system characterized a type of civilization where the relationship between the monarch and others was that the monarch was the owner of the land and the others tenants who had the right to occupy the land, for their mutual benefit. The lord undertook to protect and defend the tenant and the land occupied by the tenant in return for the allegiance and service of that tenant known as 'knight service'. The tenant held occupational rights upon the land, but the lord retained eventual ownership of the land. The ultimate 'lord' of all lands in early English history was the king.

Philip Booth observes that this doctrine developed through the marrying of two different traditions from continental Europe. The first concept being the right to possess land and gain from it without actually owning it called *beneficium* and the second that of military service owed to the lord called *feudum*.[2] This doctrine of sharing out of land based on space is called tenure, denoting from tenants.

---

[1] Philip Booth, 'From Property Rights to Public Control: The Quest for Public Interest in the Control of Urban Development' The Town Planning Review (2002) Vol. 73(2) 153-170 < https://www.jstor.org/stable/40112499> accessed 16 October 2019; David A. Thomas, 'Anglo-American Land Law: Diverging Developments from a Shared History: Part III: British and American Real Property Law and Practice-A contemporary Comparison' Real Property, Probate and Trust Journal (Fall 1999) Vol. 34(3) 443-516, 449 < https://www.jstor.org/stable/20782192> accessed 16 October 2019.

[2] Philip Booth, 'From Property Rights to Public Control: The Quest for Public Interest in the Control of Urban Development' The Town Planning Review, (2002) Vol. 73(2) 153-170, 154 < https://www.jstor.org/stable/40112499> accessed 16 October 2019.

With time however, complexities arose. The nobility who were tenants in chief to the monarch could in turn offer tenancies to others giving rise to a scenario where several people could have an interest in a given piece of land. The tenures granted, on the death of a current occupier brought in complications of inheritance. Further, feudal relations developed to a situation where increasingly service was being paid for rather than provided in return for tenure and agricultural tenures were being had for money payments rather than return for produce. To cope with these complexities, legal theorists developed the common law doctrine of estates. This is a doctrine in which sharing out of land is by time. It conceptualises a situation where multiple interests may coexist in a single parcel of land over different periods.

The doctrine was designed to protect those in occupation of land from arbitrary dispossession.[3] This resulted in a practice where instead of tenancies being granted for life selling of estates for a term of years developed and the land reverted to the lord at the expiry of the term of years. These sales or grant for a term of years is what has become to known as leasehold.[4]Leasehold can be for a specified number of years. It is periodic where the lease continues until a fitting notice is given. It is at will where the landlord may ask the tenant to depart when the landlord wishes, subject to a 'packing up period'. It is at sufferance where the leaseholder has refused to leave after cessation and payment thus the landlord cannot make a claim for trespass or use self-help to force out the tenant and has to apply to a court to regain possession of land.

2.3 Leasehold Tenure, its Origin and Impact in Kenya

The foundation of Kenyan land law and institutions has been traced to colonial and post-colonial periods. Prior to colonialism, indigenous Kenyans like many other Africans owned natural resources including land, communally.[5] They viewed natural resources including land as gifts from God to be used for the benefit of everyone in the community, premised on membership to the community, clan or family. The community among the Africans included the dead, so that the living were accountable to the dead on how they used land. Rights to land in the African context were also separable from land. For instance, Africans would plant and harvest on land without claiming ownership of the land on which the crop grew.[6]One could also own a dwelling but not the land on which the dwelling was erected.

---

[3] ibid 155.
[4] ibid 158.
[5] Francis Kariuki, Smith Ouma & Raphael Ng'etich, *Property law*, Strathmore University press (2016) ch 2, 49
[6] ibid 50.

The implication of this concept of land ownership was that land was essentially passed from one generation to another through inheritance, not from one individual to another. Such transfer was not by registration of legal instruments but membership to the community, clan or family. It also meant that land would not pass to people outside the lineage unless by agreement or conquest. All in the community including women and orphans therefore equitably used Land and were accorded a right to enjoy the use of land.

Many eminent authors such as M.P.K Sorrenson,[7] H.W.O. Okoth Ogendo,[8] Tim Mweseli[9] and Smokin Wanjala[10] have extensively written and elucidated how in the last part of the nineteenth century, the African concept of ownership and land relations in Kenya was fundamentally interrupted and altered by European settlement and colonialism. The colonialists introduced Anglo-American laws to give legal effect to expropriation of land belonging to indigenous communities.[11] These laws were based on notions of private property rights and exclusive possession of land. Leaseholds were introduced to the protectorate in this process of individualization of land ownership. British authorities and settlers did not seek to understand communal tenure or how it worked. They came up with devices that tore apart systems that were effectively managing communal interests to land, using legal and policy devices. They ignored and rejected the African traditional systems that had been in place for centuries.

A little depth into this history is important. Kenya, which was then known as the East Africa Protectorate, was declrared as a British protectorate on 15th June 1895.[12] This declaration however, only conferred political control over the protectorate to the British. It did not bestow the British authority to deal with land.[13] This was an obvious impediment to the British authorities and settlers. Control of land was an important factor in securing British interests in East Africa, which were motivated by the Indian Ocean Trade, agriculture for law materials for industries in Britain, donination of the source of the river Nile and control of the route to India

---

[7] M.P.K Sorrenson, *Settlement in Kenya: Origins of European Settlement in Kenya* (Nairobi O.U.P 1968).
[8] H.W.O. Okoth Ogendo, *Tenants of the Crown: Evolution of the Agrarian Law and Institutions in Kenya* (ACTS Press, Nairobi 1991).
[9] Tim Mweseli, 'The Centrality of land in Kenya: Historical Background and Legal Perspective' in Smokin Wanjala (ed) *Essays on Land Law: The Reform Debate in Kenya* (Faculty of Law, University of Nairobi, 2000) 3-24.
[10] Smokin C Wanjala, Land Ownership and Use in Kenya: Past, Present and Future in Smokin Wanjala (ed) *Essays on Land Law: The Reform Debate in Kenya* (Faculty of Law, University of Nairobi, 2000).
[11] Ogendo (n 8)16.
[12] ibid 9.
[13] Mweseli (n 9) 5.

and the far East through the suaez canal. In order to secure these interests, the attaintment and reign over land and the setting up of a property law regime were essential.

The law used by British authorities to gain a hold on land dealings in the Protectorate was the English Foreign Jurisdiction Act, 1890. The Act stipulated that the authority of the British Crown was to be implemented in protectorates through Orders in Council. Thus when in 1896, the British authorities were considering issuing land regulations that would enable them make dispositions of land by grants or leases to settlers, they were advised by the colonial office that the Crown could not make such dispositions because the land did not belong to the Crown.[14] The British law officials advised that the Act empowered the Crown to deal with waste lands,[15]and that the authorities could grant permission to the settlers to occupy vacant land. This was to be done through an administrative act of issuing the occupiers with land certificates authorizing them to occupy such land. The certificates would be recognised as sufficient documents of title to the land and enforced by the courts. The British Crown enacted several orders in council enabling the British to get control over land in the protectorate.

The East Africa Order in Council, 1897 was then passed extending the 1894 Indian Land Acquisition Act to the protectorate. This was an Act that made provision for the complusory acquisition of land for construction of the East Africa railway and a corrindor ten miles wide on either side of the railway for the construction of government establishments and public purposes. The Act did not however provide for the sale of land compulsorily acquired.[16] This limitation would be removed a year later by the enactment of the East African (Acquisition of lands) Order-in-Council of 1898 which provided that land obtained under the Indian Land Acqisition Act was vested in the Commissioner in trust for the Crown, and empowered and permitted the Commissioner to put up for sale or lease such land.[17]

Still in 1897, the 1897 East African Land Regulations were promulgated to facilitate acquisition of land for settlers as discussed above, made a distinction between land in the 10 Mile Coastal Strip[18] and the rest of the protectorate. In respect of the 10-mile coastal strip, the

---

[14] Sorrenson (n 7) 674.

[15] Waste lands were considered to be those lands that were unoccupied and without any settled form of government incoporated and not appropriated by either the indegenous or individuals or sovereigns.

[16] Mweseli (n 9) 6.

[17] ibid

[18] This is a ten neutical mile wide coastal strip stretching from the Kenya-Tanzania border to the Somalia border. covering about 5,480.44 square kilometers was under the control of the Sultan of Zanzibar since 1840 when the Omani Arabs settled in East Africa and established their empire. When the Europeans powers mainly, Germans

regulations empowered the Commissioner to make grants of freehold of Crown Land. In respect of the rest of the protectorate, the regulations only empowered the Commissioner to issue certificates of occupancy for a renewable period or term of 21 years.[19]

One year thereafter, in 1898 the period of term of the certificates of occuption was extended from 21 years to 99 years in 1898.[20] Under this device, more than 22,100 acres of grazing, agricultural and homested leases were granted to the would be settlers.[21] However, the certificates of occupation gave the settlers nothing more than the right to use land. They did not give the settlers the proprietary rights that they were urging for. The settlers were interested in freehold and perpetual leases.

In 1901, there was passed the East African (Lands) Order-in-Council, 1901. The Order-in-Coucil declared and defined all lands within the East African Protectorate which was subject to the control of her Majesty, and all land which may thereafter be obtained by her Majesty as Crown lands. It authorised the Commissioner subject to the directions of the Secretary of State to dispose off and make grants or leases of any crown land on such terms and conditions as he may think fit.[22]The enactment of the 1901 Order in Council therefore resolved the settlers' problem of acquiring proprietary rights. To give legal effect to the Order-in-Council, there was enacted the Crown Lands Ordinance, 1902, which repealled the East African Land Regulations of 1897.

The Crown Lands Ordinance, 1902, solidified acquisition of land for settlers. It empowered the Commissioner to sell or lease waste and unoccupied land giving regard to the native occupation. Land occupied by natives was not supposed to be available for alienation by the Commissioner, but land that was not or was no longer in occupation by natives could be sold or leased as waste and unoccupied land.[23] For the natives, the Ordinace empowered the Commissioner to grant of licences for temporary occupation of Crown Lands by natives but

---

and the British came to the coast in the late 19th century, they assumed that the sultan was the ruler of all the inhabitants of the coast and recognised his dominions. See John. M Mwaruvie, 'The Ten Miles Coastal Strip : An Examination of the Intricate Nature of Land Question at Kenyan Coast' (2011) International Journal of Humanities and Social Sciences Vol 1(20)176-182

[19] Mweseli (n 9) 6

[20] ibid 7

[21] Gordon Wayumba, 'A Historical Review of Land Tenure Reforms in Kenya' (2015) International Journal of Science and Engineering Studies Vol 2(1) 45-51, 47.

[22] Mweseli (n 9) 8.

[23] Patricia Kameri-Mbote, *Property Rights and Biodiversity Management in Kenya: The Case of Land Tenure and Wildlife* (ACTS Press, Nairobi 2002), ch 3, 57.

not for more than 5 acres and for a term of 1 year and thereafter subject to a 3 months notice to quit. The Ordiance became the legal instrument for alienation of crown land by sale or leases not exceeding 99 years.[24] Mweseli has observed that in April 1902, the then Commissioner Eliot without any directions whatsoever from the Secretary of State permitted the sale of land and issuance of 99 year leases at 15 rupees for 100 acres.[25]It has also been observed that even though the Ordinance did not permit the Commissioner to grant land in actual occupation by natives, the then Commissioner Charles Elliot disregarded the limitation in the Ordiance and alienated more than 60,000 acres of land in actual occuptation by natives in Kiambu-Limuru between 1903 and 1905.[26]

In 1908, the Land Titles Ordinance, 1908, was enacted to apparently clear doubts in regards to titles to land.[27] All persons being or claiming to have an interest whatsoever in land were required to make a claim within six months. On a favourable determination, they would then be issued with Certificates of title as conclusive evidence of ownership of land.[28] The Ordinance empowered the Governor to apply the provisions of the Ordinance to any district, area or place in the protectorate. All land over which no such claims were made were declared to be Crown land. The implication of this Ordinance was that natives who did not previously need any certificates of ownership over the land and who were ignorant of the relevance of this alien law did not make any claims and were dispossed of their land without their consent. This Ordinance remained in force in Kenya as Chapter 282 of the Laws of Kenya until 2012 when it was repealed by the Land Registration Act No 3 of 2012.

In 1915, the Crown Lands Ordinance, 1915 repealed the Crown Lands Ordinance of 1902. The 1915 Crown Lands Ordinance redefined land crown land as including land in actual occupation of natives and land reserved by the Governor for utilization and support of native tribes.[29] It therefore conferred all land in the Crown and actualised total disinheritance of natives of their land. It provided the legal security over land that the British authorities and settlers had been pursuing by vesting the radical title to the Crown from whom alienation and grant of leases of any land whether in occupation by natives could be made by the Commissioner. The

[24] Mweseli (n 9) 8.
[25] ibid.
[26] Wayumba (n 21), 47.
[27] ibid 46
[28] ibid
[29] Mweseli (n 9) 9.

Commissioner could now grant long leases to the settlers for periods of up to 9999 years free of any sale and without the consent of the natives. Smokin Wanjala argues that this was the most influential land legislation passed by the colonial government in that it made it possible for the colonial government to disinherit the natives and give interests in land to the settlers.[30] By the end of the year 1915, some 21,000 km sq. of land had been allocated to 1000 white settlers under the provisions of the Ordinance.[31]Essentially, the 9999 and 999 year leases were a way of assuaging the settlers who were clamoring for perpetual leases or freeholds.[32]

The result of these administrative and legal manoeuvres was to destabilise the customary tenure. They also resulted in shortage of land for the natives, agitations for land by the natives and eventually violent conflicts. Initially the British authorities dealt with these problems by creating separate development policy for Africans and settlers.[33] The areas with high agricultural potential were reserved for the settlers. They were designated as "the white highlands". To create room and land for the settlers, the natives were concentrated in restricted areas called "native reserves". From the reserves, they would provide labour to the white settlers.

Subsequently, on the recommendations of several Land Commissions between 1924 and 1935,[34] five pieces of legislation were enacted to try to tackle the question of land and impact of colonial land laws and specifically the agitation for land by the Africans.[35] These legislations were, the Native Lands Trust Ordinance 1930,[36] the Native Lands Trust (Amendment) Ordinance of 1932,[37] The Crown Lands (Amendment) Ordinance, 1938,[38] the Native Lands

---

[30] Wanjala (n 10) 28.
[31] Wayumba (n 21) 48
[32] Paul Syagga, 'Public Land: Historical Land Injustices and the New Constitution' SID Constitution Working Paper No. 9< http://sidint.net/docs/WP9.pdf>accessed 24 August 2018.
[33] Wayumba (n 21)47
[34] The East African Commission of 1924-1925, the Hilton Young Commission of 1927-1929 and the Kenya Land Commission of 1932-1935
[35] Mweseli (n 9) 13.
[36] The Ordinance was enacted creating the Native Lands Trust Board to administer and manage the native reserves. The ordinance empowered the Governor to grant leases of 33 years and licences to Europeans within the native reserves and compensate the reserves with land from Crown land adjacent to the native reserves.
[37] It was enacted to give effect to the recommendations that native reserves already established were to remain exclusively for the natives, that there should be no further encroachments on the native reserves, that more land should be added to small and insecure reserves, Africans should be granted leasehold interests like any other racial group, native rights should be extinguished in areas where settlers had leasehold interests, and that white highlands should remain exclusively for Europeans and expanded.
[38] It amended the definition of crown land in the Crown Lands Ordinance, 1915 to exclude natives' lands under the Native Lands Trust Boards, thus extinguishing African claims and interests in areas outside the native reserves. It also provided for the setting aside of crown lands for natives use, albeit temporarily.

Trust Ordinance of 1938,[39] the Kenya (Native Areas) Order in Council of 1939[40] and the Kenya (Highlands) Ordinance in Council of 1939.[41]

The period after 1938 was characterised by clamour for redistribution of land to the natives culminating in the Mau Mau insurgence in 1952.[42] The concern for the colonial government thus became the security of the white settlers. Three major interventions were made. The first was the settlement of Africans on vacant crown lands, which was aimed at decongesting the African areas.[43] The second intervention was through extension of agricultural services and infrastructure to the Africans to help them cope with the demands for production of cash crops on limited land.[44] The third intervention was made in 1955 through the plan of the then Deputy Director of Agriculture R.J.M Swynnerton, commonly known as the Swynnerton Plan of 1954.[45] The Swynnerton plan advocated for individualisation of land tenure in the African reserves in the hope of encouraging Africans to engage in intensive and large-scale agriculture. It also argued that individualisation of titles in the African reserves would also facilitate proper-decision making and remove conflicts relating to land, thus enhancing agricultural production.[46] The individualisation of titles would be done through adjudication and consolidation in the native areas.

---

[39] It among other things repealed the 1930 Lands Trust Ordinance and established Local Natives Trust Boards in reserve areas. It empowered the Governor to grant leaseholds interests in native reserves to non-natives with the approval of the Board and Legislative Council. In such instances, the Governor was only obliged to provide other land to the natives.

[40] It was enacted to provide for the application of African customary law in native areas, which were categorized as native lands, temporary native reserves, and native leasehold areas. It also established the Native Lands Trust Board to protect the natives' interests.

[41] It was enacted to protect the settlers' interests in the Highlands created under the 1938 Crown Lands (Amendment) Ordinance. It provided for the protection of the highlands boundaries by seeking to ensure that the boundaries of the reserves and the highlands were not to be altered except as provided in the Crown Lands Ordinance of 1930 and the Native Lands Trust Ordinance of 1938. It also established a Highlands Board to look after the interests of the settlers in the highlands.

[42] Wayumba (n 21) 48

[43] This intervention did not succeed, mainly because the lands earmarked for the settlements was unsuitable and there was aversion to dislocation of families and the coercive manner in which the programme was being administered.

[44] The plan also failed, owing to the fact that there were no attempts to integrate it to the colonial economy.

[45] Ogendo (n 8) 69.

[46] Through this plan, the colonial government sought to ensure that the Africans would be inducted into the settler economy, so that they would not disturb land distribution. In other words, this would lead them to defend the system after independence. See Gordon Wayumba (n 21) 49.

In 1956, the Native Land Tenure Rules were enacted to make available legal mechanisms for the adjudication and consolidation of land. The rules applied to the troubled areas of Kiambu, Nyeri, Fort hall and Meru.[47] The rules sanctioned setting up of mechanisms for land adjudication and consolidation by the Minister for African Affairs, where he considered that private holding of land existed. There was an assumption that entry of land into the adjudication register conferred legal title to the individual holders of the title. These measures were followed by land settlement and re-distribution schemes on the recommendations of the East African Royal Commission of 1953-1955. The recommendations of the commission included conversion of long leases to be held by Europeans into freeholds. The Legislative Council endorsed the recommendations in 1960. The Kenya Land Order in Council was then passed to give effect to the recommendations by providing for conversion of leaseholds to freeholds and acquisition of land in the highlands by Africans on a willing buyer willing seller basis.

The above outline demonstrates how during colonialism, British authorities used the law to disinherit natives of their land, appropriate huge tracks of land and convert the land to crown land and then private property for authorities and settlers. This was made on the assumption that the land was ownerless. In the process, many indigenous Kenyans were deprived their land and left landless.[48] Colonial land laws were used as an instrument of appropriation of land, exploitation and domination. A new concept of land ownership alien to natives and called leasehold emerged.

Okoth Ogendo also explains how administrative and legal mechanisms were used to promote European settlement, subjugate, and under-develop the African economy.[49] He discusses the significant aspects of the Crown Lands Ordinance of 1915, which had tremendous implications for subsequent settlement. The Ordinance declared all land as crown land subject to the Governors powers of alienation, gave settlers long perpetual leases and entrenched discrimination in landholding. He further discusses the interactions between the different property systems and their long-term economic, social and political implications to Kenya.

The works of these authors are a solid foundation for a proper understanding of leasehold tenure and its origin in Kenya. It also offers other theories of property that reflect the realism of the

---

[47] Ogendo (n 8) 72. See also M.P.K Sorrenson, *Land Reform in the Kikuyu Country* (Nairobi O.U.P 1967) 18.
[48] Colin Leys, *Underdevelopment in Kenya: The Political Economy of Neo-colonialism 1964-1971* (first published 1975, EAE Publishers 1994).
[49] Ogendo (n 8) 16.

indigenous people. This understanding of privatisation of land rights in Kenya and emergence of freehold and leasehold tenure is the foundation of this study. The study on this background examines the developments in the current legal regime and appraises the efficacy of land laws in tackling problems associated with the privatisation of land as recounted by Okoth Ogendo and in particular the emergence of fraud in the land sector.

In another of his works, Okoth Ogendo[50] examines the nature of African commons[51]as a property system. He questions the argument by early land economists that property rights derive from some ultimate or radical title vested in a juridical authority and ultimately in a sovereign. He argues that this reasoning was a deliberate failure or decision not to recognise the proprietary character of African commons. Customary law was then expressly subordinated to colonial legislation. This denial of the proprietary character of the African commons was used to promote the occupation and thereafter exploitation of the African commons by the imperial powers. This study agrees and builds on this work to augment the argument that the flexibility of leasehold tenure can and should be utilized where appropriate, for the conversion of the land from private property to community land.

The introduction of leasehold in Kenya through foreign land laws therefore entrenched privatisation of property rights. Unfortunately, independence in Kenya did not fundamentally alter or change the trend on land administration and management. At independence, the colonial land system was not dismantled. Instead, the decolonisation, which was a negotiated power transfer process, resulted in a mere removal of racial barriers to land ownership. It also resulted in safeguarding the individual property rights acquired during the colonial era including leaseholds.[52] During the transition to African rule, the colonial land transfer policies, legislation and the attendant institutions were transferred to the independent government in 1963 and developed over the years.

---

[50] H.W.O. Okoth Ogendo, 'The Tragic African Commons: A Century of Exploitation, Suppression and Subversion', University of Nairobi Law Journal (2003) Vol 1 107-117

[51] He uses the term "commons" to identify organized land and associated resources available exclusively to specific communities, lineages or families operating as common entities.

[52] Government of Kenya, *Report of the Commission of Inquiry into the Land Law System of Kenya on Principles of a National Land Policy Framework Constitutional Position of Land and New Institutional Framework for Land Administration* (Government Printer, Nairobi 2002) 31. The Commission is commonly been referred to as the Njonjo Land Commission after the name of its Chairman, a former Attorney General of the Republic of Kenya (Njonjo Land Commission).

Thereafter, procedures and legislations meant to protect public interests in land were perverted and used to facilitate private and political interests including acquisition of land.[53] Thus, the independence government of Mzee Jomo Kenyatta inherited and continued authoritarian government institutions at independence, and used 'various forms of bribery and intimidation to convert public lands to his use and that of his political allies'.[54]These dubious practices including illegal acquisition of public land, political patronage and massive corruption in the land sector found their way, with varying degrees to the subsequent regimes.[55]

Since its introduction, leasehold has remained and developed as a device of land holding, management and administration in Kenya. It has in fact been argued that there is need to have leasehold strengthened within the country's property system because it provides for optimum control of land use without compromising the landowners freedom to use the specific land allocated to them.[56] The strengthening of leasehold in Kenya is evident in the way the term of leasehold has developed in Kenya under the legal provisions.

2.4 Public Inquiries

Besides scholarly writings, there have been public enquiries on the land question and efforts made to address specific aspects of the land question in Kenya, including corruption and efforts to perfect the process of managing leasehold interests on public land in Kenya. One can argue that these efforts have shifted the gradient and shown glimpses of political goodwill to address the problem. Three land inquiries are notable in this respect.

2.4.1 Njonjo Land Commission

On 26th November 1999, the President appointed a public inquiry Commission led by Charles Njonjo, to inquire into the Land Law System of Kenya.[57] The Commission visited all provinces and each district in Kenya and held public meetings to collect views from members of the public on various land issues. It also collected views from members of public by written

[53] Roger Southall, 'The Ndungu Land Report & Graft in Kenya' (2005) Review of African Political Economy Vol 32(103) 142-151

[54] Kim Matthews & William H. Coogan, 'Kenya and the Rule of Law: The Perspective of two Volunteers' (2008) Maine Law Review Vol 60(2) 561-574; Paul Syagga, 'Public Land: Historical Land Injustices and the New Constitution' SID Constitution Working Paper No. 9< http://sidint.net/docs/WP9.pdf>accessed 24 August 2018.

[55] ibid 565

[56] Njonjo Land Commission (n 52) 53.

[57] ibid.

memoranda and submissions from professional societies, non-governmental organisations, government ministries and departments, the judiciary and members of parliamant.[58]

The Njonjo Commission submitted two reports. The first, was an interim report submitted in December 2001 and that covered critical issues which the commission felt required urgent remedial action. With regard to leaseholds, the interim report made several significant findings.

Firstly, it established that there was blatant disdain and manipulation of central land laws and practices including sections 12 and 20 of the Government Land Act which required that allocation of urban and agricultural land should be done by advertisement and sold by auction.[59] It also established that section 18 of the Government Lands Act which required that all dealings with leasehold for urban plots to be consented to by the Commissioner of Lands and only after the plots were developed, was being blatantly flauted by the Commissioner of Lands.

Secondly, the Commission established that there was confusion in the implementation of Government procedures and practices dealing with extension and renewal of leases to the detriment of landowners. Whereas there was a Ministry handbook giving guidelines to be followed by officers in dealing with applications for extensions of leases, there were no guidelines relating to applications for renewal of leases.[60] Applications for renewal of leases were being treated as applications for extension of leases.

Thirdly, the Commission established that the MoLPP did not bother to notify lessees in good time or at all about the fate of their applications for renewal of leases. This was reported to be affecting and delaying or derailing their development plans.

To address these findings, the Commission recommended that Government strictly enforces the provisions of special conditions on leasehold titles to spur development and curtail speculation. It also recommended that the Commissioner of Lands immediately formulates and publicises guidelines concerning renewal of urban leasehold and sub-leasehold titles. According to the Commision, these were matters that required urgent attention and action and that could not await the full exposition of the issues raised by members of the public and analysing of all the evidence before the Commission.

---

[58] ibid 5.
[59] ibid 11.
[60] ibid 13.

One may wonder why the Commission found it necessary to make this call for urgent intervention. The context in which the Commission was undertaking its work however illustrates why this was necessary. Most of the leases in Kenya were 99 year leases granted at the beginning of the the 19th Centrury, as discussed above. These leases were about to expire and there were already complaints that attempts by lessees to extend the leases were being frustrated by the Ministry of Land and Settlement officals. In addition, rural market and township leases most of which were originally granted for 33 years terms had already expired and lessees were in apprehension that the land would be allocated to other people.

It can be argued that if the recommendations of the Commission for urgent attention and action on these matters had been implimented, the crisis that ensued particularly after the expiry of thousands of 99 year leases granted at the end of the 20th Centrury would have been averted. At the time the Commission prepared its report, it had already sounded the warning that many of the applications for extension of the leases had not been responded to and that the Commissioner of Lands had left lessees in the dark.[61] The Commissioner of Lands continued to ignore the provisions of sections 12, 18 and 20 of the Government Lands Act and no guidelines or regulations for the extension and renewal of leases were formulated and publicised until much later in the year 2017 as will be discussed in chapter 3 below.

The Njonjo Commission in its final report submitted on 20th November 2002 made several other recommendations including development of a comprehensive land policy and establishment of institutional framework for the ownership, administration and management of land in the Constitution. With regard to leaseholds, it recommended the strengthening of leasehold in Kenyas property system. It proposed several policy principles to be taken into account including issuance of leases to citizens for a standard period of 100 years; holding of land within urban on leasehold tenure only; renewal of leases subject to general planning requirements unless determined for good cause; holding of land by non-citizens on leasehold for significant investment purposes only and for periods not exceeding 50 years.

[61] ibid

The Njonjo Commission did not complete its work and part of its data was not analyzed.[62] The Commission's report however formed the bedrock of the National Land Policy,[63]whose formulation started shortly after the Commission's report in 2004. The recommendations and policy principles proposed in the report are important principles that have informed the discussion in this study.

2.4.2 The Ndungu Land Commission

By the time the Kenya African National Union (KANU) which ruled since Independence lost power in 2002, the practice of the political elite illegally and irregularly obtaining allocation of public land was so pervasive that the country was experiencing a crisis in its public land administratioin and management.[64]The issue of illegal and irregular allocation of paublic land, commonly known as land grabbing, was thus naturally central to the campings for the December 2002 elections.[65] Six months after being elected President, the Hon. Mwai Kibaki on 30th June 2003,[66] appointed a Commission of Inquiry into the phenomenon of land grabbing.

After gathering and collating data from multiple sources including land records and official reports, information from members of public through letters and memoranda, information from volunteers and professional bodies, public and thematic hearings and analyzing such data, the Ndung'u Commission presented its report to the President in June 2004.[67] It itemised more than 200,000 illegal or irregular title deeds created and registered over public land between 1963 and 2002. There were indications that these were conservative numbers, as the commission did not manage to review all parcels.[68]

---

[62] Kenya Land Alliance, 'A Critical Analysis of the Report of the Presidential Commission of Inquiry into the Land Law System of Kenya: Sampled Reaction' Newsletter (Nairobi, 2003) 2

[63] Government of Kenya, *Sessional Paper No 3 of 2009 on National Land Policy* (Government Printer, Nairobi 2009).

[64] Wanyande P, Asingo P.O, and Walter O. Oyugi: *The Politics of Transition in Kenya, 1992-2003: Democratic Consolidation or Deconsolidation*? (Heinrich Böll Foundation, Nairobi 2003)<https://ke.boell.org/sites/default/files/thepoliticsoftransitioninkenyapublication.pdf>

[65] See Democracy and Empowerment: Manifesto of the National Rainbow Coalition (NARC) at https://searchworks.stanford.edu/view/5577014

[66] Gazette Notice No. 4559

[67] Government of Kenya, Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (Government Printer, Nairobi 2004) 2. The Commission is commonly referred to as the Ndungu Land Commission after the name of its Chairman Paul Ndungu (Ndungu Land Commission).

[68] Karanja Njoroge 'Ndung'u: Government reluctant to implement report' *Standard* 25 September 2009<https://www.standardmedia.co.ke/article/1144024860/ndung-u-government-reluctant-to-implement-report>accessed 28 August 2018.

In its findings, the Ndung'u Commission report showed that many methods were used to grab land including,[69] abuse of the Presidential discretion and power to make grants of freehold and leasehold of un-allienated government land for political patronage, usurpation of the Presidential powers by the Commissioner of Lands who in purported exercise of delegated powers would make direct grants of freehold and leasehold of un-allienated goverment land, use of forged letters of allotment, fake presidential approvals and fake title deeds to obtain allocation to public land, and illegal transfers of undeveloped leasehold land which in the words of the Commission 'were not mere aberrations of procedure' but 'deliberate mechanism of facilitating' land grabbing.[70]

The Ndung'u Commission made a raft of comprehensive recommendations including nullification of all allocations of public utility land, repossession of such land and restoration to the purposes for which the lands had been reserved; the investigation and prosecution of all public officials, professionals and all persons who facilitated or participated in the illegal allocation of public land; and recovery of all monies and other proceeds unjustly acquired as a result of the illegal allocation and sale of public land.[71] The implemention of these recommendations however faced strong political headwinds mainly because many of the people who were then in the National Rainbow Coalition (NARC) government were hitherto stewards in the KANU administration in which political patronage, corruption, tribalism, impunity and arbitrary rule were hallmarks of Kenya's politics.[72]Lack of political goodwill to implement the recommendations of the Ndung'u report again derailed the country's efforts to decisively deal with corruption and fraud in the land sector.

Section 14 of the Land Act which is under consideration in this study deals with allotment of public land including land in respect of expired leaseholds. The pervasive methods outlined in the Ndung'u report for illegal and irregular allocation of public land are still some of the methods that have continued to bedevil land administration and management in Kenya including the fradulent processing of extension and renewal of leases. They are therefore an important part of this study. The report informs the current problem of corruption and fraud in the processing of extension and renewal of leases.

---

[69] Ndungu Land Commission (n 67) 74 -79
[70] ibid 76
[71] ibid 83 - 85
[72] Southall (n 53), 143

2.4.3 Mwathane Taskforce

The Njonjo Commission's call for an urgent formulation and publication of regulations governing the processing of extensions and renewal of leases was not heeded. The country had to face the thorny issue of fraudulent processing of extension and renewal of leases. Increased public outcry on the fraudulent and irregular reallocation of expired leaseholds without the knowledge of previous lessees led to issuance of a moratorium on the processing of extension and renewal of leases on 16th December 2016 by the Government. Shortly thereafter, on 27th February 2017 the Cabinet Secretary, MoLPP established a taskforce to investigate the processing of extension and renewal of leases since 2010.[73]

The mandate of the taskforce as set out in the appointing instrument was to:[74]

(a) Analyze and review the existing policy, legal and institutional framework on processing of extension and renewal of leases;
(b) Establish the status of leases held by investors in various sectors;
(c) Review the leases that have been renewed or extended since the year 2010 to determine whether due process was followed;
(d) Make recommendations to address existing gaps and weaknesses in extension and renewal of leases;
(e) Make recommendations on the actions to be taken against all those individuals who have been involved in the fraudulent renewal and extensions of leases;
(f) Establish if there are any initiatives taken to convert land with expired leases either to community land or public land and the implications of such initiatives; and
(g) To undertake any other task, incidental thereto, as may be assigned by the Cabinet Secretary.

The Taskforce used different methods to collect information on the issue of processing of extension and renewal of leases such as desktop research and reviews, interviews with experts and stakeholders, public hearings in counties, review of memoranda and correspondence from

[73] Gazette Notice No 1812 Vol. CXIX-No. 26. See http://kenyalaw.org/kenya_gazette/gazette/volume/MTQ1Nw--/Vol.CXIX-No.26/.
[74] ibid

the public and institutions, focus group discussions, field visits and questionnaires. It then prepared and thereafter submitted its report in September 2017.[75]

In the report, the Taskforce among other things analysed the status of leases in Kenya and the issues that arise in the extension and renewal of leases. It also examined the policies, laws, regulations and institutions that govern leases, analysed the procedures, instruments for extension and renewal of leases before and after promulgation of the Constitution 2010, and discussed the findings and recommendations of the Taskforce. Among the findings and the recommendations of the Taskforce was that the extensions and renewal of leases that did not follow the law in the period 2010-2012 (between the promulgation of the Constitution 2010 and the new Land Laws) were illegal/irregular. The Commission found that fraudulently procured extensions and renewals of leases that were unlawful and should be revoked. It also found that renewals that were a product of innocent/negligent mistakes on the part of the officers or applicants were irregular and should be subjected to review for regularisation through a Rapid Results Initiative where land holding would not be contested.

There are questions as to whether the Mwathane Taskforce fully discharged its mandate. Some questions that the Taskforce was mandated to look into such as review of the leases renewed or extended since the year 2010 and actions to be taken against all those individuals involved in fraudulent renewal and extensions of leases were given a general approach unlike the Ndung'u report that outlines specific land illegally and irregularly obtained. The Mwathane Taskforce report is however instrumental for any future efforts to tackle the problem of corruption and fraud in the processing of extension and renewal of leases in Kenya. The Taskforce went to great effort to demonstrate how lack of policy and institutional coordination among stakeholders as well as lack of understanding by Kenyans of their rights and obligations for leasehold interests affect extension and renewal of leases.

One can argue that most of the issues addressed in the Mwathane Taskforce report were facilitative factors to fraudulent extension and renewal of leases. There is therefore need to analyse the underlying ethical dimensions of the society the laws seek to regulate, as the

[75] Government of Kenya, *Report of the Task Force Investigating the Processing of Extension and Renewal of Leases' presented to the Cabinet Secretary Ministry of Lands and Physical Planning* (Government Printer, Nairobi 2017). The Taskforce is commonly known as the Mwathane Taskforce after the name of the Chairman of the taskforce Ibrahim Mwathane (Mwathane Taskforce).

primary reasons why the pervasive vice of corruption and fraud persists. This is because even after the enactment of the 2012 land laws that seek to address some of the issues outlined in the report of the Mwathane Taskforce, the problem of corruption and fraud in the processing of extension and renewal of leases persists.

2.5 The Problem of Corruption in Kenya

It is widely acknowledged that corruption is widespread and pervasive in Kenya. For instance, the Ethics and Anti-Corruption Commission survey for the year 2016[76] shows that corruption in Kenya increased by 5.4 percent from the year 2015 to 2016 and that it permeates all the sectors of the economy. Kenya has also consistently been ranked among the most corrupt counties in the world according to Transparency International. In the year 2017, Transparency International ranked Kenya at position 143 out of 180.[77] On a scale of 0-100 (from highly corrupt to very clean), Kenya scored 28 points while the average score was 43 points.

The Transparency International indices have largely informed the imposition of governance measures on countries seeking loans from the International Financial Institutions, or seeking aid from the Western countries. Some authors have questioned this approach to corruption has been. John Harrington and Ambreena Manji argue that subjective views of business leaders and others inform corruption perception indices.[78]They have further observed that the dominant anti-corruption interventions are inherently rhetoric in that they are premised on a mutually contamination of corruption in that the proceeds of corruption benefit foreign investors or for exportation of goods to the foreign investors. This question needs to be considered in the corruption debate, as it must inform the formulation of anti-corruption interventions and review of the existing ones.

Harrington and Manji have however also addressed the significance of the role played by the legal profession in the illegal and irregular allocation of public land in Kenya. They have underlined the prominent role of the legal profession and its betrayal of the rule of law and transparency in land administration. The Ndung'u report heavily indicted the legal profession for its role in such allocations. Lawyers were instrumental in the creation of legal mechanisms such as change of user over public land used to frustrate the public interest in the administration

[76] www.eacc.go.ke/.../2018/Survey/Final_EACC_National_Survey_on_Corruption-2016.
[77] www.transparency.org/news/feature/corruption_perceptions_index_2017#table
[78] John Harrington and Ambreena Manji, 'Satire and the Politics of Corruption in Kenya' (2013) Social & Legal Studies 22(1) 3-23, 6.

of land. They were also instrumental in the creation of shadowy companies incorporated specifically for allocation of public land and shielding directors and shareholders of such companies. This study considers these observations as vital in considering any anti-corruption interventions in Kenya because professional skills and knowledge are critical in the success of the land administration in Kenya.

Roger Southall[79]highlighting the findings of the Ndung'u Commission observes that corruption is deeply entrenched in Kenya. Southall further observes that officials and institutions, which are supposed to be the custodians of the public land in many instances, facilitate and benefit from fraud. Section 14 of the Lands Act provides for the allocation of public land. Such land includes land, which reverts to the Government after the expiry of leases. In light of past abuses of the law recorded by Southall, this study will examine the gaps in the new land laws that have been utilised by individuals and public officials and institutions in effecting fraudulent processing of extension and renewal of leases.

Some researchers have also conducted studies in Kenya to help understand the problem of corruption and explore ways to deal with it. Studies conducted in Kenya by Caroline Nilsson in 2009 [80]and by Persson, Bothstein and Teorell[81] in 2013 have striking similarities on a number of questions. The majority of the respondents regardless of their social status and gender (all the respondents in Nilsson's study), believed that corruption was detrimental to the countries development and progress. They however believed that they were justified in engaging in corruption either because it was the only way to get services or the consequences (such as spending time in jail or many hours in court) were too grave. They also believed that fighting corruption is meaningless because either "everyone else" was engaging in it, or the individual cost of doing so was too high because of stigmatisation, loss of jobs and indeed threat to life. These studies underline the need to contextualise corruption before formulating any anti-corruption interventions.

---

[79] Southall (n 53) 142.

[80] Caroline Nilsson, 'Corruption in Kenya: Individual Attitudes and Actions Towards Corruption in Nakuru, Kenya' (Autumn 2009) STVK 01<http://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=1526071&fileOId=1530656>accessed 24 August 2018.

[81] Anna Persson, Bo Rothstein and Jan Teorell, 'Why Anticorruption Reforms Fail-Systemic Corruption as a Collective Action Problem' (2013) Governance: An International Journal of Policy, Administration, and Institutions 26(3), 449–471.

Marquette and Peiffer observe that understanding such contexts and that there are incentives for people to engage in corruption would be helpful in formulating effective anti-corruption interventions.[82] They point out that corruption is a complex problem in society because in some cases corruption is perceived as providing solutions to some problems people have. Such instances include where political leaders rely on corruption to harness political support and where individuals get access to services.[83] This study will rely on such studies to evaluate whether Kenya's legal tools and framework are well coordinated and effective in dealing with corruption.

Patrick Yingling[84]writing about two types of corruption[85] observes that Kenya, was at independence the 'West's most stalwart pupil in Africa' but had by the end of the 20th Century become 'a surly delinquent', because of the entrenchment of the culture of conventional corruption. Mwangi Wa Githinji and Frank Holquist on their part highlight the direct link between the default politics of ethnicity in Kenya and corruption.[86] They opine that the widespread corruption in Kenya is partly a product of marginalisation by all the post-colonial Kenyan regimes resulting in lack of accountability by the political class. This study will build on these works to evaluate the causes and consequences of corruption in Kenya and in particular fraud in the land sector.

Paul Ocheje draws attention to the futility of trying to address corruption in Africa through legal sanctions.[87] He calls into question the efficacy of such legal sanctions. He argues that corruption in Africa has been entrenched through social economic and political institutional foundations. Public officials are therefore willing to take the risk of prosecution as a way of getting out of poverty, knowing too well that the logistical difficulties, costs and lack of expertise in the authorities would render any identification and prosecution of such officials

---

[82] Heather Marquette and Caryn Peiffer, 'Corruption and Collective Action' (January 2015) Developmental Leadership program Research Paper 32 6<https://res.cloudinary.com/dlprog/image/upload/corruption-and-collective-action >accessed 24 August 2018.

[83] ibid 7.

[84] M. Patrick Yingling, 'Conventional and Unconventional Corruption' (2013) Duquesne Law Review Vol 51 263-320, 304

[85] He defines conventional corruption as illegal abuse of public office for private gain and unconventional corruption as the making of decisions by elected officials without regard to public interest in order to achieve re-election to public office.

[86] Mwangi Githinji and Frank Holmquist, 'Default Politics of Ethnicity in Kenya', (2009) Brown Journal of World Affaris Vol XVI(I)101-117, 102.

[87] Paul Ocheje, 'A Theory of Self-Enforcing Anti-Corruption Legislation in Africa' (2011) Law and Development Review Vol 4(3) 238-280, 240.

unlikely or ineffective. He argues that democratic consolidation and redistributive and welfare policies would empower the citizens to keep the political leaders accountable by giving them a sense of stake in the state and the ability to carry out that mandate. This study will build on Ocheje's work in evaluating the efficacy of the new land laws in Kenya.

Claes Sandgrenon on his part draws attention to the complementary role that law and strong governance systems must play.[88] He argues that a frail legal structure is favourable to corruption. On the other hand, lawyers, politicians, law enforcement administration and policy makers should be alive to the fact that to lack of accountability closely relates to corruption. They should therefore not overstress the criminal law as the mechanism for fighting corruption at the expense of governance in providing openness, checks and balances and meritocracy in the filling in of positions.

The literature outlined above shows that one of the biggest and most problematic governance issues facing Kenya today is corruption. Kenya has predominantly featured in the corruption indices as one of the countries where corruption thrives. Efforts have been made to combat corruption in Kenya, but corruption remains a way of life with corrosive effects on the economic, social and political stability of the country. It continues to ravage the country economically. It has stymied economic development with enormous resources being wasted and misappropriated. Every so often, there are reported corruption scandals costing the economy Billions of Kenya Shillings. Corruption discourages foreign investments and increases the cost of doing business. It undermines good governance, respect and trust in Government institutions. Corruption also promotes social ills such as inequality, poverty and immorality resulting in social and political instability.

2.6 Gaps in Literature

There is a wealth of literature on the land question in Kenya. The Njonjo Commission report[89] traces the genesis of the land question to colonialism. The works of M.P.K Sorrenson,[90] H.W.O. Okoth Ogendo,[91] Tim Mweseli[92] and Smokin Wanjala[93] discussed above give detailed accounts

[88] Claes Sandgren, 'Combuting Corruption: The Misunderstood Role of Law' (Fall 2005) The International Lawyer Vol 39(3) 717-731, 724.
[89] Njonjo Land Commission (n 52)
[90] Sorrenson (n 7)
[91] Ogendo (n 8)
[92] Mweseli (n 9)
[93] Wanjala (n 10)

of the Anglo-American laws introduced to give legal effect to expropriation of land belonging to indigenous communities in the colonial era. They also illustrates the historical injustices meted on the indigenous people through deprivation of their land.

Roger Southall,[94] Kim Matthews and William H. Coogan[95] and Paul Syagga[96] have illustrated how the policy of continuity and abuse of public trust by the post-independence Governments has continued to afflict the Country. This policy of continuity remains at the heart of the land question in Kenya.

Other writers have underlined the centrality of justice to the land question and highlighted the danger that the Country continues to face arising from its failure to address the land question. For instance, Patricia Kameri-Mbote and Kithure Kindiki,[97] discuss how unresolved land issues led to the 2007-2008 post-election violence. They argue that because of injustices and unresolved issues, the notion that Kenya was a peaceful country was a fallacy.[98] They first trace the land question to colonialism and subsequent failure by post-independent governments to come up with cohesive and inclusive national development agenda, which has resulted in a fragmented populace. They then discuss unresolved land injustices, alienation of land without compensation, the phenomenon of land grabbing, ethnicisation of the land question and politically aggravated land grievances. They warn that of the various issues facing post-independence Kenya, the issue of land remains the 'root of the turbulent present and uncertain future'[99] and that because of the sensitivity of the land question in Kenya, there is need to understand and deal with the land question.

Patricia Kameri-Mbote,[100] discusses the ethical and legal dimensions of the land question in Kenya and argues that there is not a single land question but multiple land questions in Kenya. She outlines the historical and present-day expressions of the land question including the history of dispossession and the legal responses to the issue. She highlights the inadequacy of

---

[94] Southall (n 53)
[95] Matthews and Coogan (n 54)
[96] Syagga (n 54)
[97] Patricia Kameri-Mbote and Kithure Kindiki, 'Trouble in Eden: How and Why Unresolved Land Issues Landed 'Peace-full Kenya' in Trouble' (2008) Forum for Development Studies Vol 35(2) 167-193.
[98] Ibid 175
[99] Ibid 169.
[100] Patricia Kameri-Mbote, 'The Land Question in Kenya: Legal and Ethical Dimensions' (2009) International Environmental Law Research Centre< http://www.ielrc.org/content/a0910.pdf>accessed on 28 November 2017.

law in dealing with the land question and argues that there is need to deal with the land question in an effective and holistic manner that takes care of greater public interest. She argues that such a method calls for a bold departure from practices that emphasis property rights however acquired and neglect grievances over land, because just treatment and public interest is as equally important as legal title to land.

Catherine Boone,[101] also discusses the problem of land conflict in Kenya and traces the use of state power in the distribution and re-distribution of land and land rights in the Rift Valley. She focuses her work on post 1960 smallholder, land buying and settlement in forest reserves. She highlights the long-standing pattern of political contestation over allocation of land, the debate always being whose rights to be recognised by the state, which has inevitably raised the question of legitimacy of past land allocations. She then traces the debate on the National Land Policy from 2002 to 2010. She argues that based on this history and debate there is reason to believe that post the formulation of the National Land Policy and promulgation of the Constitution of Kenya, 2010 the land question would continue to be problematic because the land politics in Kenya was a 'redistributive game that create winners and losers'.[102] Boone emphasises the need for equity and justice in land matters and warns that in the absence of equity and justice, absenting such, land conflicts would continue.

Peter Onyango[103]discussing the balancing of rights to land also traces the origin of the land question in Kenya to colonialism. He then evaluates the capacity of the post independent governments to enhance comprehensive, transparent and inclusive land reforms and opines that the land issue in Kenya has been 'a fulcrum of cartels and high level of chronic corruption'.[104] He highlights the fact that before finding a lasting solution to conflicts of violence arising from land injustices, the country needs address the long outstanding question of justice on land.

There is however scarcity of literature regarding the specific problem of corruption in the processing extension and renewal of leases. The Mwathane Taskforce[105] had occasion to address this problem but in a limited manner. Its mandate was generally to tackle investigate

---

[101] Catherine Boone, 'Land Conflict and Distributive Politics in Kenya' (April 20212) African Studies Review Vol 55(1) 75-103.
[102] Ibid 76.
[103] Peter Onyango O, 'Balancing of Rights in Land Law: A Key Challenge in Kenya' (2014) Sociology and Anthropology 2(7) 301-308.
[104] Ibid 301.
[105] Mwathane Taskforce (n 75)

and advice on the status of the leases renewed or extended since the year 2010 when the Constitution of Kenya 2010 was promulgated. The Taskforce did not exhaustively address the ethical questions and factors accounting for the problem of fraud in the processing of extension and renewal of leases.

The reason for this scarcity of literature is mainly that this problem is a setback that has recently arisen in a new legal dispensation commencing in the year 2010. The problem has, however arisen in a historical context of a persistent land question and stuttering quest for reform. This study will contribute to the filling of the existing deficiency in literature by drawing attention to the detection, prevention and control of corruption in the land sector which many studies lack.

The processing of extension and renewal of leases is a matter of land administration and management of land, a crucial resource in Kenya. This study underscores the importance of public sensitisation on the competing issues of equity for access to land, efficiency in land use and the country's economic development, with population growth and therefore pressure on land. It also underscores the need to ensure that those tasked with the mandate of processing extension and renewal of leases must be independent, accountable and free from manipulation that has continued to plague the country. The study draws attention to the need to focus on the rules and procedures for processing of extension and renewal of leases with a view to ensure that those who have rights and interests in leaseholds are not jeopardised.

This study also seeks to draw attention to the fact that monitoring and evaluation of corruption and fraud generally and with regard to the land sector needs to be all-inclusive. This is because there is need for a transformation from a culture of corruption to transparency and accountability in Kenya. That transformation requires the replacement of the culture of corruption with a positive culture of speaking out against the pervasive vice of corruption. We cannot expect a few individuals to bring such change to the country. This study highlights to the need to pay attention to every issue of malpractice in society. It therefore underscores the role of the collective action. The study will underscore the important place of social values, education, political reforms, religion and other social norms in the detection, prevention and control of corruption in the land sector.

CHAPTER THREE: EVALUATING KENYA'S LEGAL FRAMEWORK FOR THE PROCESSING OF EXTENSION AND RENEWAL OF LEASES.

3.1 Introduction

Law is a useful tool of regulating matters in society, not the driving force of society. This chapter evaluates the Kenyan legal framework in processing extension and renewal of leases. It first examines the treatment of leaseholds under the pre-2012 land laws in Kenya. It then examines how this treatment continues to affect land relations and in particular the processing or extension and renewal of leases despite changes in the land laws. The chapter also discusses the current legal framework and the factors to law accounting for fraud in the processing of extension and renewal of leases.

3.2 The Treatment of Leasehold under the Pre 2012 Land Laws

There were 5 main legislations on land administration and management in Kenya.[1]These were the Registration of Documents Act, the Land Titles Ordinance, the Government Lands Act, the Registration of Titles Act and the Registered Land Act. The first three were registration of documents or deeds system while the other two were a registration of titles system premised on the Torrens principles of land in Kenya.[2]

This study relates to Government land where the Government is lessor. The primary law dealing with alienation of Government land through grants of freehold and leasehold was the Government Lands Act.[3] This Act was enacted in the colonial era in 1915 to make better provision for the leasing and other alienation and administration of all Crown lands. It replaced the Crown Lands Ordinance of 1902 as amended in 1915. The Act was the primary legislation that crystallised the British system of conveyance to Kenya. Most of the 99-year urban leases and 9999 and 999 year

---

[1] For an in-depth study on the registration systems in Kenya, see P.L Onalo, *Land Law and Conveyancing in Kenya*, (Heinemann Kenya, Nairobi 1986) c 2.

[2] This was a system of land registration that originated from Australia based on the principles of accuracy and completeness of the register, finality of the register, restitution for any errors emanating from the register and reduction of litigation to the minimum. The registrar on behalf of the state maintains the register of titles to land and the register is taken on face value as evidence of ownership. See Patrick Somba Nzomo, *An investigation into land registration process and its effects on urban land development,* Project Paper submitted in partial fulfillment for the award of Bachelors of Arts degree in Land Economics at the University of Nairobi (July, 2008)10

[3] Chapter 280 of the Laws of Kenya

agricultural leases in Kenya were issued under the provisions of the Act. The 99 year leases either have expired or are due to expire while the 9999 and 999 leases and freeholds held by non-citizens have been commuted to 99-year leases with the effective date of the Constitution of Kenya 2010.

The Government Lands Act[4] gave the President special powers, to make grants or dispositions of any estates, interests or rights in or over un-alienated government land.[5] Upon alienation of any public land through grant of a freehold or leasehold, such land would be managed as either private land or public land reserved for specific purposes. Public purposes include forests, road reserves, and schools among others. In law, the Commissioner would have no more powers to re-alienate such land, except where the land reverted to the Government. This was an important provision intended to stop the Commissioner of Lands from allocating the same parcel of land to different people.

The Act delegated the special powers of the President to the Commissioner of Lands in certain instances including the extension of existing township leases on the fulfilment of the conditions specified in the leases as being precedent to such extensions and sale of farms and plots offered for auction and remaining unsold. The Commissioner or an officer of the lands department was entitled to execute, conveyances, leases or licences for the occupation of Government lands, or do any act or thing, exercise any power and give any order or direction and sign or give any document which could be done, exercised given or signed by the President under the Act.[6]

There were two major limitations or problems with regard to extension and renewal of leases under the law. Firstly, the legislation did not have any clear provisions and guidelines on the procedures for extension and renewal of leases. There is scholarly debate as to the necessity of black law in governing the affairs of a society.[7] But there are many benefits of written law in modern society including that such law has an integrity of its own which cannot be taken for granted and not only

[4] Section 3 of the Act
[5] Section 2 of the Government Lands Act defined un-alienated Government land as 'any government land which was not for the time being leased to any other person, or in respect of which the Commissioner had not issued any letter of allotment'.
[6] Section 7 of the Government Lands Act
[7] Robert S. Summers; 'How law is formal and why it matters' (July 1997) Cornell Law Review Volume 82 (5) 1165-1229.

validates but is also useful in determining the very content of law and serves as an adequate means to policy goals and legal values.[8]

In the absence such provisions, the factors to be considered, the requirements to be observed, steps to be taken or the procedures to be followed by either lessees or officials in processing the applications for extension and renewal of leases were not clear. The reason for this gap lay in the fact that the Act was the product of the colonial government policy whose whole architecture and purpose was to ingrain an overbearing settler economy while suppressing the African economy through policy and law. Settlers and colonial administration were interested in control over land in perpetuity, not in certificates of occupation or short leases requiring extension or renewal. Unfortunately, the successive governments in post-colonial Kenya retained the colonial policies and therefore further promoted the failure in the law to address the question of process in extension and renewal of leases.

To fill the gap, the MoLPP would over the years issue administrative circulars and handbooks to guide the officers dealing with applications for extension of leases pegging the extension of leases on receipt of favorable recommendations from the Local Authority, Director of Physical Planning and Director of Surveys.[9] The result was a long and complicated process involving informal liaisons between and among different persons in offices located in different buildings and places. The circulars include the 1974 circular which directed that the extension of 33 year leases be made by the Commissioner after favorable recommendations of the local authority, Director of Physical Planning and the Director of Survey.[10] There was also the 1991 Handbook on Land Use Planning, Administration and Development Procedures which gave guidelines for extension of leases,[11] and the 2000 circular issued by the Commissioner of Lands which removed the need to have comments

---

[8] ibid 1208

[9] Government of Kenya, *Report of the Commission of Inquiry into the Land Law System of Kenya on Principles of a National Land Policy Framework Constitutional Position of Land and New Institutional Framework for Land Administration* (Government Printer, Nairobi 2002) c 2. The Commission is commonly been referred to as the Njonjo Land Commission after the name of its Chairman, a former Attorney General of the Republic of Kenya (Njonjo Land Commission).

[10] Government of Kenya, *Report of the Task Force Investigating the Processing of Extension and Renewal of Leases' presented to the Cabinet Secretary Ministry of Lands and Physical Planning* (Government Printer, Nairobi 2017) 34. The Taskforce is commonly known as the Mwathane Taskforce after the name of the Chairman of the taskforce Ibrahim Mwathane (Mwathane Taskforce).

[11] Njonjo Land Commission (n 9) 13

from the Local Authority and other departments.[12] In respect of renewal of leases, there were no guidelines at all. Officials were thus applying the guidelines in respect of extension of leases to the applications for renewal of leases.

However, even where there were internal guidelines, these were only internal memos not available to the public. They were of little or no value to lessees who did not know about their existence and content. The public had nothing to guide it on what should happen to their leaseholds upon expiry of their terms. These gaps in the law on the procedures for extension and renewal of leases had serious ramifications. They resulted in confusion and unpredictability in the processing of extension and renewal of leases. There were many instances of the Commissioner of Lands or officials at the Ministry ignoring their own approvals for extension or renewal of leases thus extending or renewing leases to different individuals resulting in vicious court battles where the courts were required to determine the legitimacy of the Commissioner's actions or who was the legitimate owner of the leasehold. For instance, in the case of **Karume Investments Limited v Kenya Shell Limited & the Commissioner of Lands**,[13] the dispute before the Court of Appeal was whether the quashing of a decision of the Commissioner of Lands to grant a letter of allotment to Karume Investments over a parcel of land in Nairobi was proper.

An overview of the facts of the case may help illustrate the issue. Kenya Shell Ltd was the registered proprietor as lessee from the Government of the property for a period of 42 years and 6 months from 1st July 1962 to 20th June 2004. Shell granted a sublease to other persons, on condition that upon the determination of the sublease, all the fixtures on the land would become the property of Shell. On 12th July 1969, the sub tenants obtained the consent of Shell to transfer the unexpired term of the sub lease to Njenga Karume who again with the consent of Shell transferred the sub lease to Karume Investments Ltd.

Before expiry of the 42-year lease, Shell applied to the Commissioner of Lands for an extension of the lease. By a letter dated 3rd November 1998, the Commissioner of Lands approved the extension of the lease subject to payment of approval fees, land rent, legal fees and the surrender of the existing title for a new one. By letters dated 19th January 1999 and 26th April 2005, the

[12] Mwathane Taskforce (n 10) 35.
[13] Nairobi Civil Appeal No. 201 of 2008

Commissioner of Lands confirmed the decision to grant the extension of lease for a further term of 50 years. Shell complied with the conditions for extension and waited for the issuance of the new grant. The file relating to the property went missing at the lands office. The Commissioner of Lands directed that there be opened a temporary file for purposes of processing the extension of lease to Shell. However, the Commissioner started asking Shell questions. He wanted to know who developed the property. He then declined to issue a grant to Shell and purported to issue a letter of allotment to Karume Investments Ltd. The allotment was apparently based on fact that the developments on the property had been made by Karume Investments Ltd. Shell filed judicial review proceedings seeking an order of certiorari to quash the Commissioner of Lands decision to grant a letter of allotment to Karume Investments Ltd.

The Commissioner of Lands argument in defending the proceedings was that the law mandated him to allocate and alienate Government land and that that power was not subject to the control of the courts on how to execute the mandate. He also urged that that Shell's lease expired on 20th June 2004 and that hence the Commissioner had liberty to allocate the land to anybody, especially to Karume Investments Ltd who had invested in the land. The High Court quashed the allotment to Karume Investments Ltd. Karume Investments Ltd appealed to the Court of Appeal. The Court of Appeal upheld the decision of the High Court and held that Shell had a letter extending the lease and this created a legitimate expectation on its part that after complying with the conditions precedent to the extension of the lease, the lease would extended.

The gist of the Commissioner's arguments was that under the law, he was not answerable or accountable to anyone including the court on the exercise of his powers. These arguments by the Commissioner of Lands were not new. For instance, the Commissioner had previously raised similar arguments in the case of **Commissioner of Lands v Kunste Hotel Ltd**,[14] in which the Commissioner had appealed against the decision of the High Court to quash a decision of the Commissioner of Lands to allot a plot of land in Nakuru known as Nakuru Municipality/Block 16.

In that case, Stephen Kung'u Kagiru who was the majority shareholder of Kuste Hotel and its Managing Director had applied for allocation of a plot known as Nakuru Municipality Plot No

[14] KLR (E&L) 1 249

451, later re-numbered as Block 16/3. In the application, he indicated that he intended to build a tourist hotel. Stephen's plot abutted the Nakuru - Solai road but not the Nakuru-Nairobi highway. Nakuru Municipality/Block 16 was located between Stephen's plot and the Nakuru – Nairobi highway. Stephen's intention was that the hotel would be visible from the highway in order to attract tourists. He therefore wrote to the Commissioner of Lands on 26th August 1976 requesting that the Commissioner leaves plot Nakuru Municipality/Block 16 as road reserve or for its amalgamation with his plot to avoid future alienation and development. His request to reserve Nakuru Municipality/Block 16 as a road reserve and not for future development was granted on 21st January 1977 and he was issued with a revised letter of allotment with an enhanced acreage and commensurate increased stand premium, land rent and other dues. Mr Kagiri then built the hotel and transferred his interests in the land Nakuru Municipality/Block 16/3, to Kunste Hotel Ltd. The plot Nakuru Municipality/Block 16 between the hotel and the highway remained un-alienated.

However, on 3rd May 1993 and without any consultations with or notice to Kunste Hotel Ltd, a letter of allotment was issued to third party. This prompted Kunste Hotel Ltd to move to court for orders of certiorari to quash the allotment of Nakuru Municipality/Block 16 to the third party. The Commissioner argued that he had the power and took all essential steps before allotting the plot the third party. He also argued that the plot was un-alienated and vacant land and that in the in absence of registered restrictive covenant attached to it, he was perfectly entitled to allot the plot to the third party or any other person. The High Court quashed the Commissioner's decision to allot the plot to the third party. On appeal, the Court of Appeal found and held that the Commissioner was exercising powers under the Government Lands Act when he decided to allot the plot to the third party and that the exercise of that discretion was improper as it affected the legal rights of Kunste Hotel Ltd, which was not heard or notified before the impugned allotment.

This gap in the law on the procedures for processing extension and renewal of lease meant that the process was being undertaken in an obscure manner as exemplified by the cases discussed above. This was a fertile ground for fraud and corruption. It also gave rise to uncertainties. Kenyans have been reluctant to seek extension or renewal of their leaseholds for fear of losing their properties.

Both the Njonjo Commission[15]and the Mwathane Commission[16] have observed that there are thousands of leases in Kenya yet to be extended or renewed.

The other limitation or problem with the Government Lands Act was that it gave enormous special powers and discretion to the President, which enabled the President and the Commissioner to negate the statutory safeguards in the Act. Section 3 of the Act was very clear that the special powers given to the President were 'in addition to, but without limiting, any other right, power or authority vested' in the President under the Act. The Government Lands Act provided for the sale of leases for town plots[17] and agricultural farms[18] by public auction. The Commissioner was obligated to advertise and sell any urban plots and agricultural land available for allocation, by issuing a notice of the place and time of sale in the Gazette three months before the date of the sale. The Commissioner was also required to give other important details about the plots or farms to be sold by auction in the Gazette notice.[19]

However, the same provisions exempted such auction in cases where the President ordered. There were no stipulated guidelines for such cases. Effectively the Act provided for an elaborate process of alienation of un-alienated Government land but also empowered the President to override the same process at his discretion. The import of this was that the President had so much power and discretion that he could easily make grants of leases over un-alienated Government land without being accountable to anyone as he pleased. In other words, the provisions that sought to ensure transparence and accountability in the allocation of public land on one hand were on the other hand giving too much power and discretion the President with the potential to water down or defeat the same safeguards.

It is documented that the President and the Commissioner heavily abused provisions of the Act[20] by usurping the special powers, specifically with regard to alienation of Government Land.[21] The

[15] Njonjo Land Commission (n 9) 13
[16] Mwathane Taskforce (n 10) 24.
[17] Section 12 of the Act
[18] Section 20 of the Act
[19] Section 13 of the Government Lands Act for urban plots and section 21 of the Act for agricultural land
[20] Abuse of discretion has been defined as an authority's error in the exercise of discretion in a way inconsistent with the intended purpose this sphere of freedom of action was granted for. See Brian W. Blaesser, *The Abuse of Discretionary Power* In: Scheer B.C., Preiser W.F.E. (eds) Design Review. (1994) Springer Boston MA 43
[21] Njonjo Land Commission (n 9) c 2.

President and the Commissioner flouted provisions of the Act with impunity on the alienation of public land. Since the 1950s, there has not been any sale of urban plots or agricultural land by public auction.[22] The failure by the President and the Commissioner of Lands to advertise and sell urban and agricultural land available for allocation by public auction meant that the Commissioner was using procedures, which were inconsistent with the law. The Commissioner would make direct grants of un-alienated Government land through the issuance of letters of allotment and Presidential approvals, which was illegal.[23] It has been observed that most of the illegal allocations took place at the advent of multi-party general elections of 1992, 1997 and 2002 as political reward or patronage.[24]

The requirements for sale of urban plots and farms by public auction were therefore not effective in stopping or preventing the Commissioner of Lands from making double allocations or allocations of land meant and reserved for public utility. This gave rise to numerous disputes and uncertainties. In **Insurance Company of East Africa Ltd v Attorney General & others,**[25]a piece of land in Kizingo area of Mombasa was alienated by the Governor of the Colony and Protectorate back on 23rd July 1951 by grant of a 99 years lease to a company. Ownership of the land changed hands over the years. There were two road reserves on the Western and Southern boundaries of the property.

In 1996, the Plaintiff who was then the registered owner of the property noticed a development coming up on the road reserve to the Western boundary of its property. Two plots had been curved out of the road reserve and 99-year leases issued in respect of the plots from 1st December 1995. The Plaintiff made protests to the Commissioner of Lands, which went unanswered. It hence instituted the suit to stop the construction and challenging the Commissioner's powers to alienate the land, already alienated under the Government Lands Act as a public utility land. The Commissioner's response was that the grant of 99-year leases over the road reserve was erroneous.

---

[22] ibid 11.

[23] Government of Kenya, Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (Government Printer, Nairobi 2004) 75. The Commission is commonly referred to as the Ndungu Land Commission after the name of its Chairman Paul Ndungu (Ndungu Land Commission).

[24] Paul Syagga, 'Public Land: Historical Land Injustices and the New Constitution' SID Constitution Working Paper No. 9< http://sidint.net/docs/WP9.pdf>accessed 24 August 2018, 14.

[25] Mombasa High Court Civil Case No. 151 of 1997, [1997] LLR 749.

The High Court in stopping the development upheld the proposition that once a parcel of land has been alienated, it was not open for the Commissioner of Lands to re-alienate the same and any such purported re-alienation were illegal and void.

In another case of **Kenya Ports Authority v Commissioner of Lands and another**,[26] Kenya Ports Authority, a statutory body sued the Commissioner of Lands, the Municipal Council of Mombasa and a company called Akaba Investment Ltd seeking orders to quash certificates of lease in respect of three plots and prohibiting them from dealing with the three properties in any manner. The Plaintiff had similarly been surprised to see a development coming up in 2001. On investigations, it established that three plots were hived from a road reserve belonging to the Plaintiff and 99-year leases issued to persons from whom Akaba Investment Ltd purchased the plots. The Commissioner of Lands chose not to respond to the factual issues in dispute and opted to defend the suit on legal issues only. The Municipal Council of Mombasa in its reply stated that the land was always a road reserve and that the Commissioner of Lands never circulated the scheme of subdivision of the road reserve to the Council. In quashing the certificates of lease, the High Court found that the road reserve belonged to the Applicant and there was no land for the Commissioner of Lands to allocate as purported to do.

The outline above demonstrates that there was scarcity or limitation of laws regarding extension and renewal of leases. The enormous special powers and discretion given to the President and the Commissioner of Lands were also heavily abused and grants of leases made illegally.[27] The old land laws were therefore both inadequate and abused by those in charge. The land laws were revised in 2012 to among others, address these and other concerns.

---

[26] Mombasa HCCC No. 124 of 2001, [2001] LLR 3367.

[27] For detailed accounts of the abuse of the land laws see Government of Kenya, *Report of the Commission of Inquiry into the Land Law System of Kenya on Principles of a National Land Policy Framework Constitutional Position of Land and New Institutional Framework for Land Administration* (Government Printer, Nairobi 2002); Government of Kenya, Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (Government Printer, Nairobi 2004); Government of Kenya, 'Report of the Constitution of Kenya Review Commission Vol 5 c 14; Government of Kenya, 'Kenya: Report of Commission of Inquiry into the Post-Election Violence Government Printer, (16 October 2008)' <http://reliefweb.int/report/kenya/kenya-commission-inquiry-post-election-violence-cipev-final-report>; Government of Kenya, *Report of the Task Force Investigating the Processing of Extension and Renewal of Leases' presented to the Cabinet Secretary Ministry of Lands and Physical Planning* (Government Printer, Nairobi 2017).

3.3 Overview of the Current Legal Framework for Processing of Extension and Renewal of Leases.

3.3.1 The Constitution of Kenya, 2010

Protection of rights and interests in land has been given strong constitutional and statutory safeguards in Kenya, since independence. Section 19 of the independence Constitution, which thereafter became section 75 on revision of the Constitution, stipulated elaborate prohibitions against the deprivation, taking possession or acquisition of private property or taking an interest in or right over property of any description. Such actions were strictly limited to where it was necessary in public interests, on full compensation and with full access to the highest court in Kenya. Scholarly works demonstrate that this provision on the protection of private property was a hotly debated provision at the Lancaster Conference.[28]

The Constitution of Kenya, 2010 has sustained this protection. It prohibits Parliament from enacting laws that authorise the Government or any person to arbitrary deprive another of their property without compensation and access to a court of law.[29] The Government whether at the national or county level has no authority to arbitrarily take away peoples leaseholds and without compensation. If the Government by its actions or decisions arbitrarily deprives or threatens to deprive lessees their interests or rights in leaseholds, such lessees have the right to access court and seek redress, regardless of the time that has passed since such actions.

This guarantee is so important that the Kenyan courts have had to interpret and enforce it on several occasions. An example is the case of **The Chief Land Registrar & 4 others v Nathan Tirop Koech and 4 others**.[30] In that case, the Environment and Land Court declared that the Government wrongly seized certain huge parcels of land in Eldoret from 5 individual owners 30 years earlier (in 1996). The Court awarded the families of the said persons a total of over Kenya Shillings 7 Billion as compensation for the land. Aggrieved by that decision, the Chief Land

[28] Mary L. Dudziak, 'Working Toward Democracy: Thurgood Marshall and the Constitution of Kenya' (December 2006) Duke Law Journal Vol 56(3) 721-780; Colin Leys, *Underdevelopment in Kenya: The Political Economy of Neo-colonialism 1964-1971* (first published 1975, EAE Publishers 1994).
[29] Article 40 of the Constitution of Kenya, 2010.
[30] [2018] eKLR

Registrar, the Registrar of Titles, Ministry of Lands, Director of Survey and Attorney General appealed the decision. Apparently, the 5 landowners had subdivided one property that they owned jointly measuring 3,069 acres and surrendered the original Lease for issuance of 5 individual titles. While they were awaiting issuance of their titles, the land was unlawfully acquired, illegally sub-divided and titles issued to Government Departments, State Corporations and prominent individuals including a former President and a Member of Parliament. The families of the landowners filed a Petition contending that their property rights and interests under Article 40 of the Constitution had been violated. One of the issues raised in the Appeal was whether the Petitioners having instituted the Petition 30 years after the impugned actions, were prevented by delay and doctrine of latches from pursuing the claim. The court of Appeal held that the periods of limitation do not apply to the violation of rights to property and other freedoms guaranteed in the Constitution.

Although the Court of Appeal determined the important question of protection of property rights discussed above, the decision of the Court of Appeal is troublesome in certain respects, which may arguably undermine the values espoused in the Constitution. The Court of Appeal held that there was no sufficient evidence to show that the acquisition of the land by the Government was illegal or wrongful because the lease was surrendered to the Government on 21st September 1983. The Court reasoned that the surrender extinguished all rights and interest of the then registered owners over the suit property. Nevertheless, the Court of Appeal failed to address the reason for the surrender of the lease to the Government. The Petitioners contention and the correspondence heavily quoted by the Court of Appeal in its Judgment tended to show that the purpose for the surrender was for the issuance of individual leases to the 5 persons. The Court of Appeal also faulted the Environment and Land Court judge for relying on two valuations done on the land to arrive to the sum of Kenya Shillings 7 Billion compensation questioning why the judge did not explain why he deemed the valuation reports as reasonable. The judges of Appeal felt that the Environment and Land Court in determining the compensation took into account irrelevant considerations and failed to take into account the relevant considerations. However, the Judges of Appeal did not themselves state what those relevant considerations were and set aside the entire compensation awarded by the trial judge so that it left the Petitioners without any compensation for their land.

The above case demonstrates that property rights and interests in land including leasehold cannot be taken without due process, compensation and access to the courts. There is however an important distinction in the Constitution of Kenya 2010. It specifically states that the protection of property rights and interests does not extend to any property unlawfully acquired.[31] Where therefore a person fraudulently obtains an extension or renewal of leasehold, such illegality cannot or should not find any protection in the law. This is because the Constitution seeks to protect higher values and cannot permit its provisions to be used to countenance what is unlawful. That would in effect be defeating the very values the constitution seeks to promote. Such finding of illegal acquisition must be a determination through a process recognised by law such as the fair administration action guaranteed by Article 47 of the Constitution. The courts have underlined this in cases such as **Electrical Options Limited v Attorney General & another**,[32] and **Everlyn College Design Ltd v Director of Children's Department & another**.[33]

The courts have also considered and clearly enunciated the principle that the Constitution cannot protect illegally acquired properties. For example, in the case of **Chemey Investment Limited v Attorney General & 2 others**,[34] the Appellant moved to the Court of Appeal challenging the High Court decision in a Constitutional Petition declining to issue orders to restore possession of a property known as Eldoret Municipality/Block 4/47 to the Appellant. The property was until 8th May 1995 Government property set aside for public use. On 8th May 1995, three companies applied to the Commissioner of Lands for and issued with a 99-year lease for the property, as vacant Government Plot. The directors of one of the company were the Permanent Secretary, Office of the President and a brother to the then mayor of the Eldoret Municipality. The leasehold was thereafter sold to other companies in quick succession. Some of the purchasers shared a postal address. This suggested that the sales were meant to portray the purchasers as innocent purchasers for value and without any notice of any illegality. The Petition was triggered by an eviction of the purchasers and repossession of the property by the Government. The question in issue was whether the Petitioners ownership of the leasehold enjoyed the protection of Section 75 of the

[31] Article 40(6) of the Constitution of Kenya
[32] [2012] eKLR
[33] [2013] eKLR
[34] [2018] eKLR

retired Constitution and Article 40 of the Constitution 2010. The Court of Appeal found and held that those who illegally acquire property cannot take refuge in the property rights guaranteed by the Constitution.

This was a significant finding by the Court of Appeal. It underlines the responsibility of those tasked with land management and administration and the courts to ensure that the doctrine of sanctity of title is not used to defeat the legitimate rights and interests of lessees through fraudulent extension or renewal of leaseholds. Fraudulently or illegally obtained leaseholds cannot be sacrosanct and cannot enjoy the protection of the law. There have been other instances where the courts have upheld this principle, that whereas the Constitution protects proprietary rights and interest in land, those rights are not absolute. Such decisions in include the cases of **Niaz Mohamed Jan Mohamed v. Commissioner for Lands & 4 Others,**[35] **Kenya National Highway Authority v. Shalien Masood Mughal & 5 others (2017) eKLR,**[36] and **Republic vs The Permanent Secretary Ministry of Public Works & Housing *Ex-parte* Tom Maliachi Sitima**.[37]

Besides the protection of property rights and interests, the Constitution has an entire chapter dedicated to land and the Environment.[38] Kenyans remained steadfast and consistent in their views

[35] [1996] eKLR. The case concerned the issuance of a leasehold title over a portion of land that was a road reserve. The High Court held that on consequent vesting of the land in the Government, it did not fall to be used by the Government in any manner it desires. It must be used for a lawful purpose and a lawful purpose was the only purpose for which it was intended. The rights to property under section 75 of the Constitution did not protect allocation of such land to other parties.

[36] (2017) eKLR. The case concerned the issuance of a 99-year lease by the Commissioner of Lands to the Plaintiff over a parcel of land. The Plaintiff sought to stop the construction of a road on the property urging that his rights to property had been breached. The Respondents argued that the property was within a road reserve. The question was whether the right to property and indefeasibility of title extended to illegally acquired property. The Court of Appeal held that land acquired from a road reserve did not enjoy the protection of Article 40 of the Constitution.

[37][2014] eKLR. These were judicial review proceedings. The Ex parte Applicant sought orders of prohibition to prohibit the Respondent from carrying out an eviction from a residential property he was residing in. He was arguing that he had applied for and obtained an allocation of the property from the Commissioner of Lands. He argued that his title was indefeasible. The Respondents argued that the Applicant illegally acquired property, as the President had no power to issue the grant in breach of the law. The High Court declined to grant the orders on the grounds that although Article 40 of the Constitution protects proprietary rights, such rights are not absolute and pursuant to Article 40(6) of the Constitution do not extend to property acquired unlawfully.

[38]Chapter 5

on this chapter in the constitutional review process.[39]It sets out the general principles for equitable, efficient, productive and sustainable use, holding and management of land. These principles include transparency. Transparency is a principle that is supposed to be adopted and upheld in all matters relating to land including the processing of extension and renewals of leaseholds.[40]The aspirations in the Constitution of Kenya 2010 are meant to make a clean break from the past era. That was an era where as the Court of Appeal stated in the **Chemey Investment Ltd case,**[41] 'public officers appeared to have been bitten by a bug that infested them with a malignant and shameless craving to acquire for themselves, their friends or relatives, public property in respect of which they were trustees or custodians'. The Constitution of Kenya, 2010 has firmly and decisively pointed the right direction. Any continued malady of fraudulent processing of extension and renewal of leases and seeking refuge in legal technicalities is not excusable.

The Constitution of Kenya, 2010[42] also commuted all freeholds and leaseholds exceeding 99 years held by non-citizens, to 99-year leases from the effective date.[43]The commutation of freeholds and leases exceeding 99 years is specifically and only in respect of non-citizens. As demonstrated by the cases discussed above, a lot of the fraudulent transactions in land including processing of extension and renewal of leases were undertaken in the name of body corporate with a view to mask the individuals behind such fraud. The Constitution has addressed the potential loophole that noncitizens can be use to fraudulently obtain extension and renewal of leaseholds by clarifying that entities are citizens only if wholly owned by one or more citizens.[44] It has also clearly stipulated that property held in trust shall can only be considered as being held by a citizen only if all the beneficial interest of the trust is held by persons who are citizens.

---

[39] Committee of Experts, *Final report of the Committee of Experts Report on Constitutional Review* (11th October 2010), 61

[40] Article 60 and 68 of the Constitution of Kenya, 2010.

[41] [2018] eKLR 1

[42] Article 65 and section 8 of the Sixth Schedule of the Constitution of Kenya 2010

[43] Article 263 provides that the effective date of the Constitution would either be the date of promulgation or 14 days after the publication of the final referendum results, whichever is earlier. The Constitution was promulgated on 27th August 2010 following a national referendum conducted on 4th August 2010. The results of the national referendum were published in the Kenya Gazette on 6th August 2010.[43] 14 days after the publication of the final referendum results fell on 20th August 2010. 20th August 2010 being the earlier of the two dates is therefore the effective date of the Constitution.

[44] Article 65(3) of the Constitution.

The State is required to grant to non-citizens who held such an interest in land a 99-year lease at peppercorn rent from the effective date. These provision only talks about the term or duration of the commuted leaseholds held by non-citizens, not other terms of the leases. One can argue the conclusion from this omission is that all the other terms of the lease remain unaffected.[45]

It is also imperative to note that the Constitution of Kenya 2010 fundamentally changed the governance structure. It established the NLC and donated to it some of the functions, which were until then the functions of the MoLPP.[46]It also created two levels of Government, the national and county Government,[47] and distributed various functions from the national to county Government. The general principles of land planning and the co-ordination of planning by the counties is the function of the national government,[48] while county planning and development is a function of the county government.[49]The county Governments therefore has a primary role in land administration and management.

It can therefore be said that the Constitution of Kenya, 2010 has laid a solid basis for sound legislation and procedures that can guarantee justice and fairness to lessees in the processing of extension and renewal of leases while at the same time safeguarding societal interests. It espouses values which if properly and fully upheld by all, and especially those in charge of land management and administration should identify, prevent and eradicate the malady of fraudulent processing of extension and renewal of leaseholds.

3.3.2 The Land Act

The Land Act[50] is one of the laws enacted in 2012 to give effect to Article 68 of the Constitution of Kenya 2010, to revise, consolidate and rationalize land laws. It provides for the sustainable

[45] Mwathane Taskforce (n 10) 39.

[46]The functions of the National Land Commission are set out in Article 67 (2) of the Constitution of Kenya, 2010 and Section 5 of the National Land Commission Act. They include the management of public land on behalf of the national and county governments, advising the national government on a comprehensive programme for the registration of title in land throughout Kenya and initiating investigations, on its own motion or on a complaint, into present or historical land injustices, and recommending appropriate redress.

[47] There are 47 as set out in Article 6(1) and the First Schedule to the Constitution of Kenya, 2010. The national and county governments are distinct and inter-dependent and are required to conduct their relations based on consultation and cooperation.

[48] Section 21 Part 1 of the Fourth Schedule to the Constitution of Kenya, 2010.

[49] Section 8 Part 2 of the Fourth Schedule to the Constitution of Kenya, 2010.

[50] Act No 6 of 2012

administration and management of land and land-based resources and for connected purposes. The Act became effective on 2nd May 2012.

Extension and renewal of leases falls specifically under Section 13 of the Act. Section 13(1) of the Act provides for lessees pre-emptive rights to allocation of land after expiry of their leasehold. It requires the National Land Commission to notify the lessee, by registered mail, of the date of expiry of the lease within five years before the expiry of a leasehold. It also requires the Commission to inform the lessee of their pre-emptive right to allocation of the land upon application, if the lessee is a Kenyan citizen and the national or county government does not require the land for public use. If the lessees do not respond to the notification within one year, the Commission is required to publish the notification on one newspaper of nationwide circulation.

Section 13 of the Land Act is commendable because it seeks to bridge the gaps in the law associated with the treatment of the leaseholds under the pre-2012 land laws. It underpins the position that on expiry of leasehold, the immediate holder of the leasehold does not lose every right and interests in the leasehold and those tasked with land management and administration do not have the liberty to deal with such leasehold as they please. In the pre-2012 era, this was a gap heavily capitalised on by the Commissioner of Lands to justify and defend the extension and renewal of leases to other people, sometimes fraudulently, under the disguise of the statutory powers vested in the President and delegated to the Commissioner of Lands for alienation of Government land.

The clear intention of this provision is to have the lessee re-allocated land upon the expiry of their leasehold. There are only two exceptions. Firstly, where the lessee is not a Kenyan citizen and secondly where the land is needed by the national or county government for public use. It is arguable that every Kenyan citizen who has a leasehold should have the lease extended or renewed upon application subject only to the need for public use.

3.3.3 Land (Extension and Renewal of Leases) Rules, 2017

These rules were enacted pursuant to Section 13 of the Land Act to provide for the forms to be used, timeframes for consideration of the applications, and the matters to be considered in granting an extension or renewal of a lease.[51]

With regard to leases which are approaching expiration and the lessee has not made an application for extension, the rules adopt the requirements of Section 13(1) of the Land Act. NLC should issue notices to the lessees within 5 years before expiry of the lease by registered mail. The notices should be published in two newspapers with nationwide circulation if no response is received within 1 year of such notice.[52] The rules provide that if a lessee fails to respond to the registered mail and publication of the notice in the newspapers with wide circulation, the NLC should undertake physical verification of the land and if the lessee is in still in occupation advise them on the need to apply for extension and the consequences of not doing so.[53]

The rules deal with applications in three categories. The first category is in respect of applications for extension of a lease before its expiry. In that case, within 7 days after receipt of the Application, the NLC is supposed to forward the application to the Cabinet Secretary in case of a lease by the national Government and to the County Executive Committee Member responsible for land matters where the county Government is the lessor, for consideration.

Within 90 days from receipt of the application, the Cabinet Secretary or County Executive Committee Member is supposed to either sanction the extension of lease for a particular term with terms and conditions as may be stipulated or decline to extend the lease and give reasons for the decline.[54] The timeframes are important. The cases discussed above demonstrate that in the pre-2012 era, the Commissioner of Lands would issue letters confirming extension or renewal of leases and thereafter go quiet on issuance of leases, only to issue leases or grants to other persons and seek to defend his actions when disputes arose.

---

[51] Legal Notice No 281, Kenya Gazette Supplement No 180 of 1st December 2017
[52] Rule 3
[53] Rule 1 (4) and (5)
[54] The matters which the Cabinet Secretary or County Executive Committee Member is supposed to consider in order to determine whether to grant or decline the application for extension of the lease are set out in rule 4

Once the Cabinet Secretary of County Executive Committee Member has considered the application, the decision is then conveyed to the NLC for implementation and conveying of the decision to the lessee. If the application is declined, the NLC should advice the lessees on their right of appeal. If the application for extension of lease is granted, the NLC should require the lessee to have the land re-valued with a view to ascertain what rent and fees that the lessee should pay. The NLC should also require the lessee to have the land re-surveyed and geo-referenced, prepare a lease for the extended period with the applicable terms and conditions of the grant, have the lease executed and forward the executed lease to the Registrar for registration and entry of the extended term in the register. In this category of applications, the decision whether to extend a lease or not is that of the Cabinet Secretary or County Executive Committee Member.

The second category is in respect of applications for renewal of leases before expiry. Here, similar procedures, timeframes and considerations to those in respect of extension of a lease before its expiry discussed above apply. The difference is that the NLC is supposed to require the lessee to have the land re-valued to ascertain the land rent and other fees payable by the lessee have the land re-surveyed and geo-referenced and issue a new letter of allotment. Then a new lease is to be issued. If the land is required for public use, the national or county Government is required to notify the NLC of the need and require the NLC to notify the lessee in such a case. The national or county government should undertake an inventory of the any improvements on the land and require the lessee not to put up any new improvements or installations on the land. Again, the scenario demonstrates that the decision whether or not to renew a lease is that of the Cabinet Secretary or the County Executive Committee Member, not the NLC.

The third category is in respect of applications for renewal of expired leases after expiry. There is confusion as to who should consider and determine the application. Rule 5(2) presupposes that the NLC should consider and determine the applications. On the other hand, rule 6 requires the NLC to submit the applications to the County Executive Committee Member in charge of land within 7 days of receipt of the applications, for consideration consultation with other relevant authorities and determination.

The NLC is supposed to compel the lessee to apply for renewal of the lease and require the lessee to provide in case of a company the names of the directors of the company and their citizenship

status, land rates and rents clearance certificate and proof of compliance with the terms and conditions of the lease. The NLC is required to then confer with the national and county Government with respect to substantial transactions.[55] This is to make sure that the renewal of the lease is beneficial to the economy of the country, that the purpose for the renewal of the lease accords with national, regional or county policies and plans and is for the general public good and land use planning. This category of applications should be forwarded to the County Executive Committee Member within 7 days, for consideration and consultations with relevant authorities.[56] The County Executive Committee Member then approves the renewal where the relevant authorities have made favourable representations and require revaluation of the land to ascertain the land rent and other fees payable by the lessee ensure the land is re-surveyed and geo-referenced and then issue a new letter of allotment. A new lease is then to be issued.

The Rules also provide for appeals by lessees whose applications for extension or renewal of leases are unsuccessful.[57] The appeal is supposed to be made within a period of 30 days from receipt of the decision, to the NLC through the office the respective County office. Within 30 days of receipt of the appeal, the NLC should forward the appeal to an *ad hoc* Independent Appeal Committee established by the NLC at the county for hearing and determination within 60 days. The decision of the Independent Appeal Committee is binding on the parties but can be appealed to the court.

3.4 Factors to Law Accounting for Fraud in the Processing of Extension and Renewal of Leases.

The promulgation of the Constitution of Kenya, 2010, the enactment of the 2012 land laws and the promulgation of rules under Section 13 of the Land Act are great strides towards ensuring transparency and accountability in the processing of extension and renewal of leases. There are however factors to these laws that account for the persistence of fraud in the processing of extension and renewal of leases. These factors can be categorised into three, namely omissions and gaps, inconsistencies and limitations in law. Omissions and inconsistencies in law here refer to

[55] The rules do not define what amounts to substantial transactions
[56] The rule does not define what or who the relevant authorities are
[57] Rule 7

matters of the of the express provisions law itself while limitations in law refers to inadequacies in or to law relating to the formulation and implementation of law.

3.4.1 Omissions in Law

As discussed above, ommissions and gaps in law the pre-2012 era was a prominent reason corruption and fraud in the land sector including extension and renewal of leases. Such ommissions were a fertile ground for fraud. There are similarly glaring omissions in the post 2010 laws that will continue to inhibit the law in dealing with fraud in the processing of extension and renewal of leases.

For instance, county planning is designated as a function of the county Government,[58] and includes extension and renewal of leases. However the county Government's role in this area and the factors that the county Government is supposed to consider in the discharge of that role has not been clearly spelt out in the law. This is a concern because the omission in law can be a source of abuse of powers and duties to the detriment of leasehold owners and the society. This is demonstrated by the omission in the pre-2012 laws regarding the process for extension and renewal of leases that was invariably capitalised on by the Commissioner of Lands as discussed above.

Section 13(1) of the Land Act and the regulations formulated under it require lessees to apply for extension and renewal of leases but do not state what should happen if a lessee does not apply for extension or renewal of the lease or respond to the notices by the Commission. What subsection 1(b) provides for is publication of the announcement in one paper circulating on national scale, if a lessee does not respond to the registered mail provided for in subsection 1(a) within one year. It is arguable that the land reverts to the Government where no application is made, and becomes available for allocation to other parties under the provisions of Section 14 of the Act. The question that arises from this is what if the NLC does not make such publications. Publication in the newspapers in Kenya is also an expensive undertaking considering that private business entities own the leading newspapers. It also puts into question whether newspaper advertisements are the most prudent and efficient ways to use public resources. There is a likelihood that where the NLC

[58] Section 8 Part 2 of the Fourth Schedule to the Constitution of Kenya, 2010.

and its officers either by omission or by deliberate intention fail to issue notices or carry out ground inspections lessees may lose their pre-emptory rights.

Section 13(1) also provides for the pre-emptory rights of allocation of land to lessees who are Kenyan citizens but is silent on the fate of the non-citizens. It leaves room for argument as to whether non-citizens are entitled to extension or renewal of leases. It does not also state what matters should be taken into account in considering applications by non-citizens. This is an important issue to land in Kenya. There have been threats by some Governors to the effect that they would not be extend or renew long leases granted to foreigners,[59] even though they were only commuted to 99-year leases from the effective date of the Constitution of Kenya 2010. This issue has been relegated to subsidiary legislation, namely the rules and regulations made by the NLC and the MoLPP. The question that arises from this is whether subsidiary legislation should deal with or address substantive rights to property. The constitutionality of such regulations is in question and may serve as another factor in the fraudulent processing of extension and renewal of leases.

Further, the manner in which the Land (Extension and Renewal of Leases) Rules, 2017 have been formulated does not fully take into account the deficiencies in the parent law. For instance, rule 1 of the rules seeks to address a situation where notices are not issued by the NLC or do not reach the lessees. If a lessee fails to respond to the registered mail and publication of the notice in the newspapers with wide circulation, the NLC is required to undertake physical verification of the land and if the lessee is in still in occupation advise them on the need to apply for extension and the consequences of not doing so.[60] However, the rule does not state what those consequences are. The rule is also silent on what should happen if the NLC does not conduct the physical verification for whatever reason, or if upon verification, it finds that the lessee is not in possession or occupation of the property. This is an important question considering that many of the cases dealing with

---

[59] John Gachiri, 'Surveyors warn governors Kabogo, Chepkwony on foreign leases' Business Daily (Nairobi 26 July 2015) <https://www.businessdailyafrica.com/markets/Surveyors-warn-governors-on-foreign-leases/539552-2809962-de5nh7z/index.html> accessed on 16 October 2019

[60] Rule 1 (4) and (5)

illegal allocation of Government land seem to show a lack of transparency and accountability and even deliberate inaction to facilitate fraudulent transactions.

The rules are also silent on important matters necessary for transparency and accountability in the processing of extension and renewal of leases. For instance, they are silent on who should lodge the applications for extension and renewal of leases. This leaves room for involvement of cartels and fraudsters who have previously been instrumental in the manipulation or records to facilitate fraudulent processing of extension and renewal of leases. Some of the other important matters, which the rules are silent, include the prescribed form/instrument for making recommendation; prescribed form/instrument of approval; the relevant institutions or persons to be consulted; and what should happen if the Commission fails to issue notices or conduct ground inspections.

The rules are primarily concerned with bureaucratic and power control, not matters of land economics and use. They do not provide clear guidelines on the matters to be considered before processing of extension and renewal of leases before expiry. Under the rules, the Cabinet Secretary and County Executive Committee Member are only required obtain some information in determining whether to grant an extension or renewal of lease before expiry. The should require in case of a company the details and citizenship of the directors, clearance certificate for land rates and rents and evidence of compliance with the terms and conditions of the existing lease. It is only in the case of substantial transactions for renewal of expired leases that the NLC is required to hold the stipulated consultations with the national or county Government. Even then, the rules are not clear on the roles of the various institutions.

The rules do not also give the criteria for appointment to the Independent Appeal Committees. The constitutionality of the Appeal Committees is also in question considering that it is delegated legislation and not the parent Act that provides for their establishment.

3.4.2 Inconsistencies in Law and Policy

There is an obvious inconsistency between the Constitution and the Policy about the terms of leases for Kenyan citizens. The Constitution only commuted freeholds and leases exceeding 99 years held by non-citizens. It is silent on freeholds and long leases held by Kenyans. Interestingly,

the National Land Policy[61] has a different requirement. The policy was adopted just a year before the promulgation of the Constitution of Kenya 2010, setting out the goals and direction for the present and future land management and providing for measures and guidelines that the government is supposed to implement in order to achieve optimal land utilization and management. It requires the Government to ensure that the duration of all leases does not exceed 99 years, and establish mechanisms for the surrender of interests held beyond 99 years.[62] The policy does not segregate between citizens or non-citizens. It covers all freeholds and leases exceeding 99 years whether held by citizens or non-citizens.

There are also internal inconsistencies in the provisions of the Land Act and generally in the land laws. For instance, the Section 13(2)(b) of the Act presupposes that the NLC is to consider and determine applications for extension and renewal of leases. On the other hand, the regulations made under the Act and discussed below reveal that it is for the national or county government or the Cabinet Secretary or Committee Member in charge of land matters at the national or county Government to consider and approve the applications. Thus, the decision whether to extend a lease is that of the Cabinet Secretary or the County Executive Committee Member, not the NLC. This is inconsistent with Section 13 of the Act, which denotes that the decision whether to extend a lease of not is that of the NLC. Under the rules, the role of the NLC is to receive applications and forward them to the Cabinet Secretary or the County Executive Committee Member and to implement the decision to extend or renew the lease or communicate the decision of the national or County Government to the lessee. The rules have therefore reduced the role of the Commission to that of a clerk. The establishment of the NLC was to bring transparency and accountability to land management and administration and check the excessive powers vested in individuals in the Executive.

The Cabinet Secretary and County Executive Committee Members are political appointees of the President and Governor respectively. They may not well versed with land administration, management, use and economics. Under the rules, individuals retain the power and discretion to consider applications for extension and renewal of leases and decide whether to extend or renew

[61] Government of Kenya, *Sessional Paper No 3 of 2009 on National Land Policy* (Government Printer, August 2009).
[62] ibid s 80 (c) and (d).

leaseholds. Relocation of these powers from one person in the name of the Commissioner of Lands under the pre-2012 Land laws to the Cabinet Secretary and County Executive Committee Members by itself may not enhance the transparency and accountability that has been lacking in the law. There is therefore still too much reliance on individuals' discretion.

This inconsistency can also cause or promote disagreements between the NLC and the Cabinet Secretary or Committee Members in charge of land matters and jeopardise the pre-emptive rights of lessees. Such disagreements are not fanciful considering that NLC should check the arbitrary and unilateral control over land and land allocation by the executive arm of Government. In fact, immediately after the establishment of the NLC, wrangles between the MoLPP and NLC brew up. The MoLPP starved the NLC by reducing its budget and forcing its officers to operate in a tent outside the Ministry's headquarters at Ardhi House.[63] The MoLPP which had hitherto been the principal institution dealing with land administration was asserting its responsibility to vet applications for extension and renewal of leases before involving the NLC based the provisions of Article 64 of the Constitution of Kenya 2010. That provision defines private land to consist of among others 'land held by any person under leasehold tenure'.[64] The MoLPP's argument was that the NLC's mandate was confined to managing public land under Article 67(2)(a) of the Constitution. On the other hand, the NLC was adamant that some of the leases due for extension or renewal were irregular and that it was the mandate of the NLC to verify the applications for extension and renewal of leases.

Arising from this rivalry, the NLC sought the advisory opinion of the Supreme Court of Kenya on the functions and powers of the NLC on the one hand and the functions and powers of the MoLPP on the other, with regard to land administration and management functions among other issues.[65]The NLC requested the Supreme Court to demarcate the respective roles of the NLC and of the MoLPP. The Supreme Court's advisory opinion was that both the NLC's mandate under the

[63] Ambreenja Manji, 'Whose Land is it Anyway? The Failure of Land Law Reform in Kenya' (2015) Africa Research Institute< https://www.africaresearchinstitute.org/newsite/publications/whose-land-is-it-anyway/> accessed 24 August 2018.
[64] Article 64(1)(b) of the Constitution
[65] In the matter of the National Land Commission [2015] eKLR

Constitution and the legislation enacted pursuant to it is one 'required to function in a collaborative and consultative constitutional and legislative setting'.

The advisory opinion settled in law the question of the functions of land administration and management as incorporating different state agencies and requiring them to work in co-operation with each other. The practical aspects of this co-operation have however proved difficult to achieve. There are still simmering tensions between the MoLPP and the NLC. Arguably, the provisions of the National Land Commission Act and the manner in which the NLC was set up may unwittingly craw back the transformative land reforms envisaged in the Constitution and the National Land Policy.[66] This demonstrates that there is need to consider review of the National Land Commission Act and the regulations to harmonise them with the spirit of the Constitution and the National Land Policy on land administration and management. Claims of corruption within and by the Commissioners and officials may also be compromise the reliability of the NLC in tackling the vice of corruption in the land sector.[67]

Another inconsistency in law is that Section 160(1) of the Land Act gives the general power to make necessary rules under the Act and generally effectively set in motion the objectives of the Act, to the NLC or the Cabinet Secretary where applicable.[68]On the other hand, Section 160(2) specifically gives powers to the Commission to make regulations on other matters set out in the said subsection. An example of such conflict was the case of **Anthony Otiende Otiende v**

[66] Catherine Boone, Alex Dyzenhaus, Seth Ouma, Catherine Galeri, et al; 'Land Politics under the new Constitution: Counties, Devolution, and the National Land Commission' (October 2016) International Development Working Papers Series 16(178) < http://www.lse.ac.uk/International-Inequalities/Assets/Documents/Working-Papers/Catherine-Boone-Land-Politics-under-Kenyas-New-Constitution-Counties-Devolution-and-the-National-Land-Commission.pdf> accessed 24 August 2018.

[67]The National Land Commission Chairman and officials are currently being prosecuted over corruption allegations. See Hilary Kimuyu, 'Swazuri and 23 former NLC officials arrested over Sh100m land scam' Nairobi News (Nairobi 17 April 2019<https://nairobinews.nation.co.ke/news/eacc-arrests-swazuri-23-other-former-nlc-officials-over-sh100m-fraudulent-land-compensation> accessed 16 August 2019.

[68] Section 160 of the Act. These regulations may prescribe the forms to be used in connection with the Act. They may also prescribe the management of the Land Compensation Fund, procedures to be followed with respect to the making of any claim for compensation and payment of compensation, the manner of assessing value of interest in land, the minimum and maximum land holding acreages in respect of private land.

Cabinet Secretary Ministry of Lands, Housing and Urban Development and 2 others.[69] Such inconsistencies can be a fertile ground for fraud.

3.4.3 Limitations in Law

There are two major external factors to law accounting for fraud in the processing of extension and renewal of leases. First, is delay in the formulation of the regulations under Section 13 of the land Act. Section 13 (2) of the Act empowers the Commission to formulate rules including rules prescribing the procedures for applying for extension of leases before expiry and prescribing the factors to be considered by the Commission in determining whether to extend the tenure of leases or re-allocate the land to the lessee. There was a long delay in the making of rules and regulations on lessees' pre-emptive rights.[70]This delay made the realisation of these rights problematic. The NLC came into operation in 2013. It was not until 1st December 2017 that the NLC published the Land (Extension and Renewal of Leases) Rules, 2017. The absence of such rules for a period of 4 years resulted in uncertainty and lack of understanding on the roles of the various institutions, process, timelines, instruments, criteria and objectivity in the processing of extension and renewal of leases. In this period, NLC and MoLPP were both dealing with extension and renewal of leases in parallel providing an opportunity for fraud.[71] The next chapter discusses the absence of such regulations as being symptomatic of a lag to the old regime when the Commissioner of Lands sought to do whatever he pleased.

Secondly, Section 13 of the Land Act makes an underlying assumption that NLC has readily available data on all leases in Kenya, their terms and the dates of their expiry. It also assumes that

---

[69] [2016] eKLR. In this case, the High Court held and declared that the registration forms and forms of titles issued by the Ministry from the year 2013 when the Commission became operational and without the advice and input of the Commission, public participation and Parliamentary approval were unconstitutional, null and void. The High Court however suspended the declaration of invalidity for a period of 12 months to enable the Cabinet Secretary to initiate meaningful public participation, advice of the Commission and Parliamentary approval. The High Court further declared that default in such compliance would render all the regulations and forms null and void essentially on the 366th day following the courts order.

[70] Section 13(2) of the Act provides for the requirement for the Commission to make the rules. The rules were to provide for the procedures for applying for extension of leases before expiry. They were also to prescribe the factors to be considered by the Commission in determining whether to extend the tenure of the lease or re-allocate the land to the lessee, the stand premium and the annual rent to be paid by the lessee in consideration for extension of the lease or re-allocation of the land and other covenants and conditions to be observed by the lessee.

[71] Mwathane Taskforce (n 10) 56.

National Land Commission has all the relevant details and addresses of all lessees in Kenya to enable it issue notices to the lessees. The reality on the ground is that land records IN Kenya are manual records and there is no central database of land and landowners. The Mwathane Commission had to conduct its own data repository at the Senior Plans Records Office at the Ministry's head office at Ardhi House Nairobi and undertake a data collection exercise at the Survey of Kenya with a view to establish the status of leases in Kenya.[72] Some of the lessees may not even have postal addresses due to technological advancements that have placed email and social media platforms on a pedestal compared to the old methods of communication. These data and information gaps may render it difficult or impossible for the NLC to perform its duties under Section 13 of the Act. Corrupt individuals and land officials have previously capitalised on such gaps to fraudulently process applications for extension and renewal of leases, as illustrated by the cases discussed above and in the previous chapter. The fact that Kenya did not, until late 2019 when the Data Protection Act, 2019 was enacted, have data protection laws did not help the situation.

3.5 Conclusion

As a tool for regulating society, law is supposed to remain ever a servant, never master of society.[73] Where a society increasingly turns to law for solutions to social problems and as a guide to conduct, it risks an unhealthy trend of law and for society. Society needs to place personal values and conduct beyond that prescribed by the law.

The discussion in this chapter reveals that law and land administration and management in Kenya have not only been a source of injustice leading to individuals losing their property rights and interests in leaseholds, but a source of disputes and even violent conflict. There are still omissions and gaps, inconsistencies and external factors to law limiting its effectiveness in addressing the problem of fraud in the processing of extension and renewal of leases in Kenya. Such can still be exploited to further fraudulently transactions and deny legitimate lessees their pre-emptory rights and interests in leaseholds and the country and opportunity to meet societal needs.

---

[72] ibid 22.

[73] Charles E. Clark, 'The Function of Law in a Democratic Society' (1942) University of Chicago Law Review 393.

CHAPTER FOUR: ANALYZING THE PROBLEM AND MANIFESTATIONS OF FRAUD IN THE PROCESSING OF EXTENSION AND RENEWAL OF LEASES IN KENYA

4.1 Introduction

To be an effective tool of regulating society, law must take into consideration the economic, environmental, political, social, cultural and ethical dimensions of the society it seeks to regulate. For law is supposed to express the will of the people in society, promote and protect their interests. Failure to take into account such dimensions may result in a lag between the law and societal needs and interests, including the protection of property rights and interests as well as the identification, prevention and eradication of vices such as corruption.

In this quest, there is a casual relationship between a legal system and corruption as 'a weak legal system is conducive to corruption, but corruption also weakens a legal system'.[1] This chapter addresses the interplay between corruption and extension and renewal of leases.

4.2 Conceptualising Fraud in the Land Sector

There is not a single comprehensive or precise definition of corruption. Sandgren has observed that corruption 'has become a generic term for a variety of bad phenomena in the public sector'.[2]Thus, what amounts to corruption may vary from one country to another. Margaret Munyae and Munyae Mulinge define it as 'a form of antisocial behaviour by an individual or social group which confers unjust or fraudulent benefits on its perpetrators'.[3]

In Kenya, corruption has been defined to include bribery, fraud, embezzlement or misappropriation of public funds, abuse of office, breach of trust or an offence involving dishonesty in connection with any tax, rate or impost levied under any Act or under any written

[1] Claes Sandgren, 'Combating Corruption: The Misunderstood Role of Law' (2005) The International Lawyer Vol 39(3) 717
[2] ibid 722
[3] Margaret M Munyae and Munyae M Mulinge, 'The Centrality of a Historical Perspective to the Analysis of Modern Social Problems in Sub-Saharan Africa: A Tale From Two Case Studies' (1999) Journal of Social Development in Africa 14(2) 51-70, 60.

law relating to the elections of persons to public office.[4] By this definition, fraud is a form of corruption.

The term fraud also lacks a precise definition. The Kenya Anti-Corruption and Economic Crimes Act, which defines corruption as including fraud does not define the term fraud. Fraud has however generally been defined to be 'any kind of artifice by which another is deceived, hence all surprise, trick, cunning, dissembling, and other unfair way that is used to cheat any one, is to be considered as fraud'.[5]

From these definitions, the distinction between corruption and fraud is not self-evident. However, the intentions for the antisocial behaviour in question are an important distinguishing factor. A corrupt practice is wide as to include petty offences such as the giving or soliciting money to influence delivery of service as well as mega corrupt deals where significant public resources are used to oil the wheels of public procurement. A fraudulent practice on the other hand relates to action or omission that intentionally and deliberately weighed up to or endeavours to deceive someone else to get a financial or proprietary gain or to circumvent a requirement.

The discourse in this study is in respect of activities emanating from dishonesty or an intentional falsification of pertinent existing details. It focuses on such activities made by one person to another such as the officials or the institutions dealing with processing of extension and renewal of leases for the purpose of tricking or inducing them to extend or renew a lease to the person making the representation or to another person. Such activities include deliberate fabrication of facts; suppression of information; use of forged documentation; and dishonest use of information or position for individual monetary gain. In other words, the study is limited to activities intended to result in the extension or renewal of a lease as a benefit and not for the rendering of services.

Section 13 of the Land Act depicts an intention to have immediate lessees allocated leaseholds if they are Kenyans and the land is not required for public use. In this context, fraud in the processing of extension and renewal of leases arises where there is intentional misrepresentation of facts made

[4] Section 2 of the Anti-Corruption and Economic Crimes Act, No 3 of 2003
[5] John Willard, *Treatise on Equity Jurisprudence* (Platt Potter Edition 1879) 147.

for purposes of tricking or inducing the national or county Government to extend or renew a lease to others other than the immediate lessees who have pre-emptory rights of allocation.

4.3 Presentation of Biographical Data

This study collected data from 22 respondents. The researcher first obtained broad data about the respondents such as their age, number of years involved in the processing or extension and renewal of leases, level of education and salary scale. 16 out of the 22 respondents were male and the other 6 female. That accounts for 72.7% male and 27.3% female respondents. Majority of the respondents were aged between 31 and 50 years. Majority of the respondents had been in service and involved in the processing of extension and renewal of leases for more than 10 years. All the respondents were university graduates with 59.09% having a Masters degree. 68.18% of the respondents were on a salary scale of between Ksh 10,000 and Ksh 100,000. Table 1 below captures the sample profile.

Table 1: Sample profile.

		Frequency	**Percentage**
Gender	Male	16	72.7
	Female	6	27.3
Age	Below 25 years	0	0
	26-30 years	3	13.63
	31-40 years	8	36.36
	41-50 years	9	40.90
	51 years and above	2	9.09
Years in service	5 years and below	3	13.63
	6-10 years	4	18.18

	11-15 years	7	31.81
	16-20 years	1	4.54
	21 years and above	7	31.81
Highest Level of education	KCSE Certificate	0	0
	Diploma	0	0
	Degree	9	40.90
	Masters Degree	13	59.09
	PhD	0	0
Salary scale	Ksh 10,000 – 100,000	15	68.18
	Ksh 100,000 -200,000	6	27.27
	Ksh 200,000 – 300,000	1	4.54
	Over Ksh 300,000	0	0
Department	Lands	8	36.36
	Survey	6	27.27
	Physical planning	3	13.63
	Adjudication	5	22.72
Duration of involvement in processing extension and renewal of leases	Less than 1 year	3	13.63
	1-5 years	5	22.72
	5-10 years	1	4.54
	Over 10 years	13	59.09

The data collected from the respondents was used to do the following; (i) establish the factors that lead to fraud in the processing of renewal and extensions of leases in Kenya; (ii) assess the adherence to procedural requirements in the processing of extensions and renewal of leases and the impact of not following such procedures; (iii) assess whether any notices are given to lessees and the general public on pre-emption rights and availability of public land for allocation; (iv) establish whether any mechanisms have been put in place to verify and ensure that the applications for extension and renewal of leases are by genuine lessees; (v) ascertain categories of people engaged in fraudulent extension and renewal of leases; (vi) assess how any officials involved in fraudulent processing of extension and renewal of leases are viewed and dealt with; and (vii) ascertain what reforms and social mechanisms can be taken to enhance the prevention, identification and eradication of corruption in the processing of extension and renewal of leases in Kenya.

The data was then used to analyse manifestations of fraud in the processing of extension and renewal of leases. The responses have been used to describe and explore the respondents' attitudes, values and beliefs, experiences and behaviour towards corruption and in particular fraud in the processing of extension and renewal of leases. The responses have been analysed under two main themes. The first theme is factors accounting for fraud in the processing of extension and renewal of leases. The second theme is issuance of notices of pre-emptory rights to lessees and of allotment of public land to the public.

In the process of analysing the responses, the data was also compared with facts and contentions made in court cases where manifestations of corruption and fraud have been demonstrated. Some of the cases involve lessees trying to recover their leaseholds lost through fraudulent processing of extension and renewal of leases and others relate to disputes between or among the institutions tasked with land administration and management on their respective roles. These cases illustrate and exemplify the responses given by the respondents on different aspects of fraudulent processing of extension and renewal of leases.

4.3.1 Factors Accounting for Fraud in the Processing of Extension and Renewal of Leases.

The data in this study demonstrates that there are many factors accounting for fraud in the processing of extension and renewal of leases. The factors can be put into three main categories,

namely institutional/organisational, personal/individuals and external/environmental. Institutional/organisational factors are those relating to how the institutions and offices dealing with the processing of extension and renewal of leases are organised, resourced and run. Personal/individual factors are those relating to the views, attitudes and beliefs of the officials involved in one way or the other in the processing of extension and renewal of leases. They are the things that cause individuals to act or not to act fraudulently or resist the temptation to act fraudulently in the course of the exercise of their duties in processing extension and renewal of leases. External/environmental factors are those emanating from sources other than the arrangements at the work place or settings within which the processing of extension and renewal of leases is done and personal views, attitudes and beliefs.

4.3.1.1 Institutional/organisational factors.

The respondents gave several institutional/organisational factors for the fraudulent processing of extension and renewal of leases.

The first factor and one that featured prominently, is the nature of the records and registration system currently in use. Kenya's land records, survey and registration systems are largely manual. They are not arranged in systematic order and are therefore largely unreliable. Each parcel of land has its own deed file and correspondence file. Any transaction on a parcel of land therefore necessitates the physical movement of files from one office to another. 18 out of the 22 respondents indicated that the poor records are a factor in fraudulent processing of extension and renewal of leases. That accounts for 81.8% of the respondents. Table 2 below illustrates.

Table 2: Factors accounting for fraud

Reasons	Frequency	Percentage
Fake re-allocation documents	2	9.0
Ignorance by lessees	16	72.7
Poorly kept manual records	18	81.81

Creation of new Land References	3	13.63
Lack of strict policy guidelines on pre-emptive rights	1	4.5
Cartels and brokers at the land office	14	63.9
Lengthy bureaucratic process	4	18.18
Greed for land and money	1	4.5
Secrecy in the renewal process	4	18.18

The land records are also not in good physical condition and therefore a health risk to the officials due to dust from old papers, especially where one is required to attend to records on which no transactions have been undertaken in a long time. The researcher made a visit to the lands office in Nairobi and from a casual observation, found scattered files lying on the floor in corners and some workstations. In an interview with one of the senior administration officials at the office, the researcher established that the situation in Nairobi and central registry has been improving over time. More cabinets are being provided for the safekeeping of the records. Digitisation of the land records is also underway. However, officials at the registry were still relying on the physical deed files to process transactions as opposed to using the digital portal.

The disappearance or unavailability of deed files and correspondence files at the lands office has become a common phenomenon. This is a well-documented problem in the reports of the various land commissions. Some of the respondents indicated that in some instances, officials at the offices, motivated by rent seeking or desire to fraudulently process land transactions engineer the disappearance of records. However, there are also instances where unavailability of records is genuinely and purely a matter of poorly kept records. Whatever the case, the nature of the records is a haven for fraud and is responsible for poor communication between and among the stakeholders and fraud in land management and administration.

The second institutional/organisational factor is the absence of a complete record of all leases in Kenya, their terms and when the leases are due to expire. This situation obtains notwithstanding the provisions of the Land Act[6], which required the NLC to identify public land and prepare and keep a database of all public land as well as establish and maintain a register containing the particulars of all public land converted to private land by allocation. The Land Act came into effect on 2nd May 2012. More than 7 years after its enactment, the NLC is yet to come up with such a database or register. As discussed in the previous chapter, this factor has affected the effectiveness of the law and specifically Section 13 of the Land Act and the rules under it. The provisions require NLC to issue notices to lessees within 5 years before expiry of their leases. Without all the relevant information, NLC is not in a position to issue notices to all lessees. This makes room for people to alter or falsify land records for purposes of fraudulently processing extension and renewal of leases.

The effect of this is that the custodians of land records have no readily available information on leaseholds in Kenya and their expiry dates. They depend on the activities generated by transactions relating to land such as change or extension of land use, subdivisions and extension and renewal of leases. These are transactions initiated by the landowners. Availability of information on leases is therefore demand driven. This makes it easy for persons with information on expired or expiring leases to conceal such information to meet their desired end. For instance, some of the respondents said that it is common for officials at the land registries and directorate of survey to hide records of leasehold properties whose term have or are about to expire with a view to manipulate the renewal of such leases, to companies in which they have a stake or interests.

The lack of a database on leases in Kenya and their dates of expiry and the nature of records discussed above have not only contributed to corruption and fraud in land management and administration but also the loss or inefficient use of public funds. For instance, on 2nd August 2018 the NLC filed a reference under section 127 and 128 of the Land Act being **National Land Commission v Afrison Export Import Limited & 10 others**,[7] seeking determination of several issues in respect of a leasehold property known as L.R No 7879/4 a portion of which it was seeking

[6] Section 8 of the Land Act.
[7] [2019] eKLR.

to compulsorily acquire. The compulsory acquisition was at the instigation of Afrison Export and Import Limited and Huelands Limited the registered owners of the property. One of the questions for determination in the reference was the construction, validity or effect of the Title document over the property. There was also the question of whether the two schools erected on a portion of the property were on public or private land.

At the time of filing the reference, the NLC had made an award of Ksh 3.27 Billion for compulsory acquisition of a portion of the land and paid a hefty sum of Ksh 1.5 Billion. The NLC relied on letters from a director of the companies who was complaining of historical land injustices that the Government had compulsorily acquired the land without the registered owners being paid compensation. The NLC also relied on a search provided by the companies and that reflected the two companies as the registered owners of the property.

It was established that the registered owners of the property had way back in 1982 and through their agent applied for approval of the subdivision of the property. The Nairobi City Council and the Central Authority[8] approved subdivision plan in September 1982, on condition of surrender of the land earmarked for social amenities such as schools to the Government as public land for use for the designated public purposes. The registered owners were attempting to conceal these facts. They contended that they cancelled the subdivision scheme by a letter to the Director of Physical Planning dated 5th April 1984, because the conditions imposed were unacceptable to them and that they did not execute an instrument of surrender and none was registered.

The court found that by a letter dated 4th July 1984, the registered owners through their duly appointed agent had written to the Commissioner of Lands and formally confirmed the surrender of the public utility plots. Based on the surrender and approval of the subdivision scheme, the schools were built on a part of the land surrendered and had existed for more than 30 years. It was also established that in April 1985, the registered owners subdivided the land on survey plans approved by the Director of Surveys on 10th April 1985 and that the plots on which the schools stood were given their own parcel numbers approved by the Director of Survey on 9th May 1985.

[8] Central Authority was the body tasked with such approvals under the provisions of the Land Planning Act and the Town Planning Act then in operation. Both Acts have been repealed.

The court held that the registered owners could not rely on their failure to execute the surrender instrument to defeat the public purpose for which the public utility plots were planned.

This case illustrates how poor and unreliable land records can be manipulated or falsified to achieve certain ends including facilitating fraud. There were two searches conducted in the same year, over the same property, emanating from the same registry but which were contradictory. One search showed that there were encumbrances on the land while the other showed no encumbrances. The court found that the records at the lands registry 'can be manipulated to achieve certain objectives which in most cases are intended to deceive'[9] those transacting in the property. Such manipulation of the records waters down the Torrens registration system, which ought to emphasise the accuracy of the land register.

The establishment of NLC was a great milestone towards the realisation of the transitional justice on land in Kenya. It is therefore alarming that the NLC, which is the institution mandated with the function of managing public land was in this case culpable. It was apparently conspiring and colluding with the registered owners and officers of the Nairobi City County, the Survey of Kenya and the Ministry of Education to conceal the fact that part of the land on which the schools stood were surrendered to the government back in 1984 and was therefore public land. A colossal sum of Ksh 1.5 Billion of public funds was lost merely because of the actions of the NLC. The NLC is the body tasked with review of grants of land and did not conduct any due diligence on the property. It did not even bother to follow the constitutional and statutory requirements for compulsory acquisition of land and paid the sum of Ksh 1.5 Billion before valuation of the land was conducted.

The lack of a database on leases in Kenya also undermines the Government's capacity and opportunity to use leaseholds as an effective tool for other societal needs and interests. The Constitutional Petition in **Serah Mweru Muhu v Commissioner of Lands and 2 others,**[10] illustrates this. The Petitioner was the Executrix of the estate of James Kangari the proprietor as lessee of a parcel of land in Gilgil, Ol Kalou in Nyandarua County measuring 583 acres, for 99 years from 1st November 1911 due to expire on 1st November 2011.

[9] [2019] eKLR, 28
[10] [2014] eKLR.

Following the post-election violence of 2007-2008, the State made advertisements appealing to members of public to present proposals for the sale of land to the State for settlement of Internally Displaced Persons (IDPs). On 7th September 2009, the Petitioner offered to sell the property to the state at a sum of Ksh 300,000/- per acre. At the time, the Petitioner had commenced the process of extension of the lease. The offer to sell the land to the State was made when the process of extension of lease was ongoing. Eventually, an agreement was reached on 7th February 2012 for the State to purchase the land at Ksh 200,000 per acre. Meanwhile, in December 2009 before completion of the sale, the State through the local administration settled some IDPs on a portion of the land and gave assurances that it would purchase the remaining part of the property.

The term of lease expired before issuance of a new lease. On 30th January 2012, the Petitioner by a letter addressed to the Commissioner of Lands applied for renewal of the lease to which no response was forthcoming. The Commissioner of Lands went quiet. The Petitioner filed the Petition claiming that the failure by the Commissioner of Lands to grant a renewal of the lease and complete the sale was a violation of her proprietary rights protected under Article 40 of the Constitution. On their part, the Commissioner of Lands and the Attorney General contended that the lease lapsed on 1st November 2011, and the title reverted to the state and that it was irregular for the Government to buy its own land. The State also contended that the extension and renewal of a lease is not an entitlement but discretionary.

The High Court found and held that the Petitioner had proprietary interests in the property. In making the finding the court considered that there was a written binding agreement for the State to purchase the land and that at the time the parties entered into the sale agreement, the process of extension of the lease had already been invoked. The court also considered that by contracting with the Petitioner before to the expiration of the lease, the State had expressed a commitment to renew the lease. The court therefore held that if the State did not intend to renew the lease, it should have communicated its decision in writing, to the Petitioner.

This case further illustrates that the aspirations and principles of equitable, efficient, productive and sustainable holding, use and management of land set out in the CoK 2010[11] are being

[11] Article 60 of Constitution of Kenya, 2010.

jeopardised by poor and unreliable land records and abuse of discretion by officials concerned. It shows that the State and the County Government of Nyandarua which approved the extension of lease were not either aware or did not consider the fact that the lease for the land was expiring. One would be expect that if there were a database of leases with the dates of their expiry coupled with efficiency, the State would not have entered into a contractual relationship with the lessee thereby spending a sum of Ksh 104,600,000/- on the purchase of the property. There was an opportunity to inform the lessee that the land would revert to the government upon expiry of the lease and used for a public purpose being the settlement of the IDPs. The state simply assumed that the land was government land available for use as it pleased even after the invocation of the extension of the lease.

The third institutional/organisational factor is bureaucracy. The pre-2012 process involved application by way of a letter to the Commissioner of Lands and correspondence between departments and with other relevant parties such as the county councils. The correspondence was often uncoordinated and unreliable. The offices involved are not in one building. In the end, the process was scattered across offices, long, complex and demand driven. For instance, the title registration process alone involved more than 12 main actors and 45 steps before landowners can obtain their title documents. The survey of the land involved changing of land parcel numbers at the extension or renewal of leases. This has resulted in the creation of virtually a new record. The impact of this is multiple survey records for same parcels of land and disputes as each party issued with a deed plan claims to have authentic records.

This problem is exemplified by the case of **National Land Commission v Afrison Export Import Limited**[12] discussed above, where all the correspondence produced in court setting out the history of the property including those showing surrender to the Government back in 1984 were obtained and produced by the Ethics and Anti-Corruption Commission. These documents were obtained from the Ministry and the Nairobi County Government during the investigations. Yet, the NLC whose constitutional and statutory function includes initiating scrutiny into current and past land injustices and proffer suitable remedies did not take the documents into consideration in its

[12] [2019] eKLR.

dealings with the registered owners of the property. The Ministry and the Nairobi County Government also had the documents in their records, but officials in these institutions were accused of conspiring with the registered owners to conceal the documents with a view to misrepresent the land as private land.

The process in the post 2012 regime has been discussed in the previous chapter. It is not very different from the past. With the omissions in the Land Act and the regulations, the situation is that the process still involves consultations between officials in scattered and unidentified institutions. The lessees who are supposed to initiate it seldom understand the process. It creates an opportunity for duplication of records at the survey office and the land registries. The long bureaucratic and uncoordinated process makes it conducive for falsification or manipulation of records and documents.

The fourth institutional/organisational factor is leniency on errant officials. 17 out of the 22 respondents, accounting for 77.27% of the respondents stated that officials who are found engaging in corruption are dealt with are simply transferred. Some of the other respondents stated that such officials are either taken through internal disciplinary processes such as verbal or written warnings, referred to government agencies dealing with corruption such Ethics and Anti-Corruption Commission and Directorate of Criminal Investigations, dismissed from work if convicted offences, or transferred to other stations after being reprimanded. Transfer of officials involved in serious crimes such as corruption or fraud is not a sufficient or even an appropriate remedy to the problem. It does not deter corruption and fraud. It only means that the officials involved in such vices can carry on with their vices in other stations.

The role of officials involved in land management and administration in carrying out fraudulent land transactions including fraudulent processing of extension and renewal of leases cannot be downplayed. There is a great danger of their actions and inactions depriving lessees of their property rights and even causing conflict between parties who look up to the law to protect their rights to property and those who strongly feel that such rights have not been obtained legally or justly.

To illustrate this, the case of **Francis Nyagah Njeru v Director of Public Prosecution & 2 others**, [13]is on point. The Applicant was a director of a company called Frank Logistics Limited. He sought an order of Prohibition to stop the Director of Public Prosecution and the Director of Criminal Investigations from prosecuting him in a criminal case where he was charged with two counts of forgery, two counts of making false documents, two counts of malicious damage to property and 2 counts of obtaining registration by false pretences. He contended that on 6th January 2009, Frank Logistics Limited applied for allocation of two properties L.R No 1870/1/337 and L.R 1870/1/338 situated in Parklands, Nairobi County and was thereafter issued with a letters of allotment and leases for the properties and was therefore the registered owner of the properties. He also contended that on 2nd December 2016, the company received a notice declaring the buildings erected on the properties as unfit and requiring their demolition.

The details of the how the company obtained title to the property are rather puzzling. Two brothers acquired the properties in issue in 1971 as one property L.R 1870/1/290. They thereafter subdivided it into L.R No 1870/1/337 and L.R No 1870/1/338 and the brothers registered as the owners of one parcel each. In 2003, Kurji's leasehold interest over the properties expired but inadvertently, they never noted the expiry date and it escaped their mind. It was not until 2007 when the family was going through their documents and records that they discovered that their leases had expired. Kurji immediately applied for renewal of the lease on 2nd April 2007. The Commissioner of Lands immediately sought comments from the Director of Physical Planning, Director of Surveys and Director of City Planning. Kurji received verbal assurances that the leases would be renewed. They remained in possession until on 4th December 2016 when the Applicant's agents forcibly evicted the family. This resulted in the complaint to the NLC and investigations for purposes of determining the ownership of the title to the properties.

During the NLC investigations, it became apparent that Frank Logistics Limited obtained the titles to the properties fraudulently. The titles were obtained through connivance and comprise of several public officers in the offices of the Ministry. All the documents relied on by Frank Logistics Limited from Deed Plan, the Letter of Allotment, the Certificates of Title and the Enforcement Notice from the Nairobi County Government were forgeries. The reference to

[13] [2017] eKLR.

'original number - Nil' used on the titles was for virgin undeveloped land. The Registrar and Nairobi County Council officials disowned the title documents and approvals as unlawfully and irregularly obtained. The officials whose names appeared on the documents claimed that their signatures were forged. The forgery of these documents was undertaken when Kurji's application for renewal of the leases was pending and significant progress made in processing the application and the necessary approvals obtained and the land was not therefore available for allocation to other parties.

One of the most alarming facts of this case was that the leases issued to Frank Logistics Limited were said to have been investigated by the National Police Service Cybercrime Forensic Unit and found to have been processed using the lease management system and printed in the office of the Chief Land Registrar at the Ministry. The response by the Ministry was that the lease was printed through the system without going through the laid down procedures of data capturing and verification. While the Ministry's response focused on failure to follow the required procedures, it failed to address the critical question of how a fraudulent document could be processed and printed through the Ministry and in its offices. The fact that the lease, a document obtained through fraud was admittedly processed and printed through the Ministry system is a chilling indictment on the ministry. Its officials were clearly involved in the fraud. This raises the important question of how to deal with officials who are involved in such fraudulent conduct.

The High Court declined to quash the criminal proceedings. It held that the criminal process in Kenya provides for safeguards meant to ensure that an accused person is afforded a fair hearing and the trial courts were better placed to consider the evidence to acquit or put the accused person in their defence. The High Court also held that it was in the interest of the applicant, the respondents, the complainants, the litigants and the public at large for the criminal prosecution to be heard and determined quickly in order to establish the truth and put the issues to rest.[14]

The jurisprudence enunciated by the High Court in this case is no doubt a progressive one for purposes of eradication of corruption and fraud in the land sector in Kenya. The war against corruption and fraud in the land sector cannot be won without the mechanisms through which the

[14] At the time of the study, the Criminal Case against the Applicant had not been heard and determined.

vices are advanced being properly and fully interrogated. For many years, perpetrators of corruption and fraud in the land sector have relied on legal technicalities to avoid scrutiny and accountability for their actions.

When the custodians of information, records and documents relating to land use such records and documents to perpetrate fraud, the effects of their actions are wide and devastating. They can cause conflict where people who claim to have proprietary rights to land crush with those who believe that such rights have been unjustly and illegally obtained. Such officials therefore ought to be held accountable for their actions and prosecuted where necessary.

The investigators at the Land Fraud Unit in the investigation department of the Directorate of Criminal Investigations interviewed by the researcher expressed great concern that the provisions of the law protecting officials from liability when exercising their duties was a major factor in the errant behaviour of officials.[15] Registrars and officials dealing with land management and administration have abused and misused these provisions to facilitate corruption and fraud. Section 25 of the NLC Act has retained similar protections and there is a risk that they will continue to be abused in the post 2012 regime if no prosecutions are undertaken against delinquent officials.

The fifth institutional/organisational factor is the involvement of land brokers/agents. 14 out of the 22 respondents accounting for 63.9% of the respondents identified the involvement of land brokers/agents and cartels as one of the prominent factors to fraudulent processing of renewal and extension of leases. The brokers/agents were said to be powerful because of political connections and being well resourced thus feared. They obtain inside information on parcels of land in respect of which leases are about to expire. With such information and aware of the processes involved, they generate or introduce falsified documents into the process or procure the hiding of records of parcels of land where the leases are about to expire, in collaboration with rent seeking officials. Falsified documents include allotment letters, re-allocation letters, deed plans and official

[15] Such provisions include Section 77 of the Registration of Titles Act, Section 79 of the Land Titles Act and Section 126 of Government Lands Act, which protected registrars or any persons acting in good faith under their authority from personal liability to any action or proceedings relating to exercise of their powers under the Acts.

searches. The omission in the regulations on who should submit the applications for extension and renewal of leases makes it possible for land brokers and agents to continue abusing the process.

4.3.1.2 Personal/individuals factors

The respondents gave several personal/individual factors for the fraudulent processing of extension and renewal of leases.

The first factor is greed. In the interviews with the senior administration official at the ministry of lands and the investigators, they revealed that there is a strong and growing feeling or attitude among officials involved in land matters that their work is an opportunity to acquire property. They attributed the growth of this attitude to the perception that others in society are equally benefitting from their occupations. They made specific reference to the notorious situation of Kenyan Parliamentarians who have on many occasions sought to enhance their salaries and allowances despite public outcry and existing legal safeguards as justification for such attitude. This feeling and attitude was justified on the basis that salaries of officials involved are low and cannot enable them to live a decent living and meet the needs of their families. The resolve to resist any temptation to either rent seek, facilitate fraudulent transactions or secure some land for self is therefore outweighed by the demands and needs of the officials and pressure from external factors.

In all the cases discussed above, the role of officials at the various institutions dealing with the processing of extension and renewal of leases in perpetrating fraud is apparent. It is apparent that there are officials who out of greed play a prominent facilitative role in fraud. Such officials are quick to deny their role and the documents emanating from those institutions, when disputes arise. Considering that there are thousands of leases which have expired and have not yet been renewed as reported by the Mwathane Commission, there is great concern about leases which may have been fraudulently extended and renewed but are yet to be discovered because of the quiet with which the exercise is seemingly undertaken.

Secondly, there is failure by officials to undertake the procedural requirements for the extension and renewal of leases. The views on whether all procedural requirements are followed were evenly distributed. 11 out of the 22 respondents indicated that there are procedural requirements that are not followed. That accounts for 50% of the respondents. 10 respondents indicated that all the

procedural requirements are followed accounting for 45.4% while 1 respondent indicated that they did not know whether all procedural requirements are followed.

Some of the procedural requirements that the respondents indicated as not being followed include, (i) failure to conduct ground verification to verify information presented with the application and on the status of the properties by the survey office, (ii) failure to cross reference existing data and information contained in the applications, (iii) allowing new grant survey work even where the existing records show that there is a parcel number in existence and registration over the land in issue, (iv) failing to verify letters of allotment and part development plans, (v) failing to consider the recommendation of county governments and physical planners, (vi) failing to obtain official and current searches and relying on searches obtained or manufactured by the Applicant's, (vii) failing to confirm that the conditions of leases are complied with, and (viii) failing to authenticate documents being entered into the system falsified documents. These are significant matters considering that Section 13 of the Land Act and the regulations made under it are silent on what should happen if NLC fails to carry out ground verifications.

The investigators interviewed by the researcher observed that all, or most of the officials involved in the processing or extension and renewal of leases are highly trained and experienced in their work. From such training and experience, they are in a position to identify fake title documents and identify procedures, which have not been followed. It is therefore improbable that there can be fraudulent processing of extension and renewal of leases without deliberate or negligent action or involvement of some of the officials. The conclusion by the investigators was that there is massive fraud in the processing of applications. The implication is that there are multiple but conflicting records and deed plans for the same parcels of land. There is also silent allocation of land to fraudsters, increased ownership disputes, delays in the processing of extensions and renewal of leases, disappearance of records, mistrust amongst the officials, loss of government revenue, uncontrolled developments, uncertainty and insecurity in the land administration system and the title documents.

Slackness on the part of officials is rampant. A number of pending court cases illustrate this. For example, in the case of **Republic v Director of Survey & 2 others *Ex-parte* Sayani Investments**

Limited.[16] Sayani Investments Limited was the owner as lessee of three parcels of land in Nairobi and a commercial building erected thereon having purchased the properties in the 1950s. The three leases were with effect from 1st January 1911 and the terms for each of the leases were to expire on 1st January 2010. In the year 2007, prior to the expiry of the leases the lessee applied for the extension of the leases and by letters dated 13th August 2007, 4th December 2007 and 14th January 2008, the Director of Physical Planning and the Commissioner of Lands confirmed the renewal of the leases. The Applicant complied with the conditions for renewal of the leases and started following up on the issuance of new Grants. The issuance of the Grants was delayed by disappearance of the files relating to the renewal of the leases at the lands office and the death of the Company's founding director on 12th March 2012.

However, in July 2013 and March 2014 whilst following up on the issuance of new Grants to the properties, the Director of Survey informed Sayani Investments Limited that he could not be issue it with the Deed Plans for the suit properties because the three parcels had been amalgamated and another Deed Plan issued in respect of the properties. The Director of Survey did not disclose to whom the Deed Plan amalgamating the properties had been issued despite several demands from Sayani Investments Limited. Sayani Investments Limited applied for prerogative orders. It sought an order of certiorari to quash the Deed Plan issued by the Director of Survey for the consolidation/amalgamation of all the properties. It also sought an order of Mandamus to compel NLC and the Chief Registrar of Titles to issue Grants to the Applicant in respect of the suit properties for a renewed term based on the approvals of extension of its leases.

The files and records relating to the properties could not be traced at the lands registry. The Company records at the companies' registry could also not be traced. The entire family files at immigration office could also not be traced. Apparently, the company's records were hidden or destroyed with a view to destroy all trace of potential children and heirs of Mr and Mrs Sayani and create the impression that the company was no longer in existence after the death of its founding Director.

[16] [2016] eKLR.

The High Court found that three years before expiry of the tenure of the leases, Sayani Investments Limited sought an extension for a further term and that the Commissioner of Lands did approve the renewal of the leases for a further 50 years with effect from 1st December 2007. The Court observed that the Director of Surveys had refused to provide information on whose request the amalgamation was done and in whose favor the leases were extended, despite many requests by Sayani Investments Limited. The court also found and held that the properties were not amenable to any form of alienation and what the Director of Surveys and the Chief Land Registrar were obliged to do was to issue fresh grants for the renewed period of 50 years from 1st December 2007. The High Court also found that Section 13 of the Land Act was clear that after expiry of the leasehold, the NLC is under a statutory duty to first tender to the immediate lessee pre-emptive rights of allocation of the said land.[17]

The Director of Surveys had confirmed in writing that he had conducted investigations and established that the Deed Plan amalgamating the properties was procured fraudulently, through utterance of fake documents. He had cancelled the Deed Plan. There was even a court order stopping issuance of title to the properties to any other person other than Sayani Investments Limited. However, this did not deter fraudulent issuance of title to the suit properties based on the fraudulent Deed Plan. On 6th October 2016, a Certificate of Title was issued to two other companies namely Sadhani Limited and Keibukwo Investment Limited. The companies were only incorporated in 2011. The Chief Land Registrar thereafter cancelled the Certificate of Title to the two companies in November 2017.[18]The Cancellation was based on the facts that the Deed Plan amalgamating the titles and the letters of allotment issued to the two companies were fraudulently

56

[17] One year after the judgement, two companies applied to set aside the Judgment on the ground that they had not been given an opportunity to be heard. In a ruling dated 27th September 2018, the High Court found that the judgment was regular and that the matter 'revealed so much of the rot that existed at the Lands Office' but set aside the judgment in the interests of justice to allow the two companies to be heard. The matter is yet to be re-heard and determined.

[18] The two companies have challenged the Cancellation of the Certificate of Title in High Court Constitutional Petition No 29 of 2018 while Sayani Investments Limited filed Judicial Review Proceedings in High Court Miscellaneous Application No 554 of 2018 seeking orders of certiorari to quash the Certificate of Title fraudulently issued to the two companies. The directors of the two companies have also been charged with four counts of conspiring to defraud Sayani Investments Limited of land, obtaining registration of land by false pretences, making false documents and forgery in Chief Magistrate Court criminal Case No 819 of 2019 which is yet to be heard and determined.

obtained. The NLC contended that it was not privy to the process under which the two companies fraudulent obtained the Certificate of Title.

The cases of **Sayani Investments Limited**[19] and **Francis Nyagah Njeru**[20] discussed above demonstrate the effects of failure by the officials concerned to undertake their duties diligently and faithfully. In those cases, the fraudulently renewed leases were issued for vacant undeveloped plots when in fact the properties were developed. If for instance ground verifications were conducted, it would have been established that the properties were developed and in occupation by the immediate lessees.

4.3.1.3 External/environmental factors

The respondents gave two external/environmental factors to fraudulent processing of extension and renewal of leases. The first factor is ignorance by landowners. 16 out of the 22 respondents accounting for 72.7% pointed ignorance on the part of landowners and legal administrators on their rights or the interests they hold as a reason for fraud. The respondents expressed the view that many landowners and legal administrators are not aware of the terms of their leases, their expiry dates and that they are required to initiate the process for renewal of extension and renewal of leases. The **Francis Nyagah Njeru**[21] case illustrates this. In that case, Kurji, the immediate lessee indicated that he only discovered that the leases to their properties had expired when they were going through some family documents.

On the other hand, the institutions and officials dealing with land administration and management have made no efforts of any kind to enlighten landowners on their rights and interests and the processes they are required to undertake to safeguard their proprietary rights and interests in leaseholds. The assumption by the officials seems to be that the lessees are aware of their term limits, their pre-emptory rights and the need to apply for renewal of extension of leases. It is also assumed that lessees would apply for extension or renewal of their leases when the leases are about to or lapse. This means that there are lessees who are caught unawares. This is a sad situation as perpetrators of the fraud with inside information are utilising such information and falsify

[19] [2016] eKLR.
[20] [2017] eKLR.
[21] [2017] eKLR.

documents and quietly obtaining leases or grants to properties whose original lease terms have lapsed or about to lapse. This is exemplified by the case of **Francis Nyagah Njeru**[22] involving Kurji brothers who only discovered that title to their properties had been issued to another person when they were forcefully and through fraud evicted from their land on 4th December 2016. It is also exemplified in the case of **Sayani Investments Limited**[23] where the company only got to know about the illegal and fraudulent issuance of a Certificate of Title to its properties to Sadhani and Keibukwo when the two started demanding payment of rents from Sayani's tenants in the building.

The second external factor is exertion of pressure. The respondents identified politicians, brokers/agents, and what some termed as "top level ministerial leadership" or "highly connected people," as those putting pressure on officials. The pressure is put on officials in high-level management and in turn from the high-level management to those in lower and technical level. Over time, the vice has cascaded to the lower and technical levels so that instead of pressure, the officials at these levels use support and favour to benefit each other in acquiring some properties. One respondent expressed frustration and resignation about such pressure when they stated in their response, "*what should we expect them to do? A poor man can only beg. He needs to keep his job for his family*".

4.3.2 Effects of Non-Issuance of Notices under Section 13 and 14 of Land Act

The study also sought to establish whether notices of pre-emptive rights to allocation and of allocation of public land are usually issued by NLC to lessees and the public under Sections 13 and 14 of the Land Act.

In the previous chapter, the conditions set out in Section 13 of the Land Act were discussed. NLC should issue notices of pre-emptive rights of allocation to the lessees within 5 years before expiry of their leases if they are Kenyan citizens and the land is not required for public use. Out of the 22 respondents only 2, accounting for 9.09% of the respondents indicated that the NLC usually gives such notices. The 2 respondents however indicated that such notices are given informally, which puts in to question the reliability of such informal notices. Section 13 and the regulations made

[22] [2017] eKLR.
[23] [2016] eKLR..

under it require that formal notices be given. They also stipulate the manner in which the notices should be given. 18 of the respondents accounting for 81.81% of the respondents stated no such notices are given. The other 2 accounting for 9.09% of the respondents indicated that they did not know whether such notices are given. This data overwhelming shows that no notices are given under Section 13 of the Land Act.

The respondents gave several reasons for the non-issuance of notices of pre-emptive right to allocation. Table 3 below captures the reasons given.

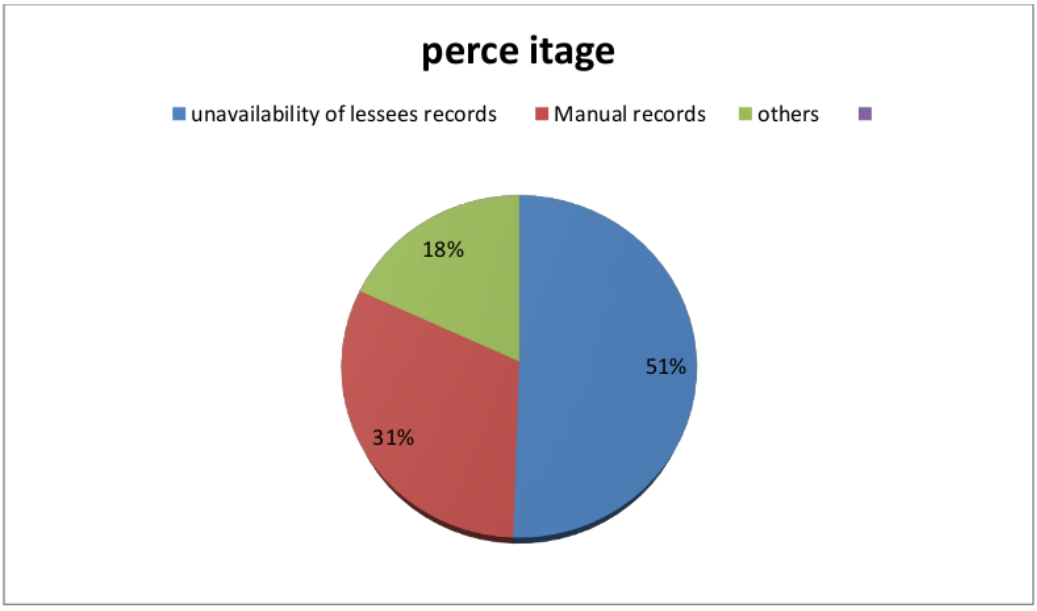
Table 3: Reasons for Non-issuance of notices of pre-emptive rights

Reasons	Frequency	Percentage
Lack of mechanisms/regulations for issuance of such notices	2	9.0
Lack of data on leases in Kenya and their expiry dates	5	22.7
Lack of records of lessees and their contact details	11	50.0
Manual records thus tedious process	7	31.81
Assumption that lessees are aware of the need to apply	4	18.1
Notices would give fraudsters opportunity to grab land	1	4.5
Secretive treatment of land ownership by Kenyans	2	9.0
Such notices not a legal requirement		

	4	18.1
It is an opportunity for officials to allocate land to themselves	1	4.5
Lack of follow up by concerned land officials	1	4.5

Of all these reasons, 50% of the respondents listed the unavailability of the records of lessees and their addresses. 31% of the respondents listed reliance on manual records. 18% of the respondents listed the other reasons. This data shows that the nature of the records was given as the main reason for the failure to give lessees notice of their pre-emptive rights, with 82% of the respondents listing it as one of the reasons. The pie chart below reflects this.

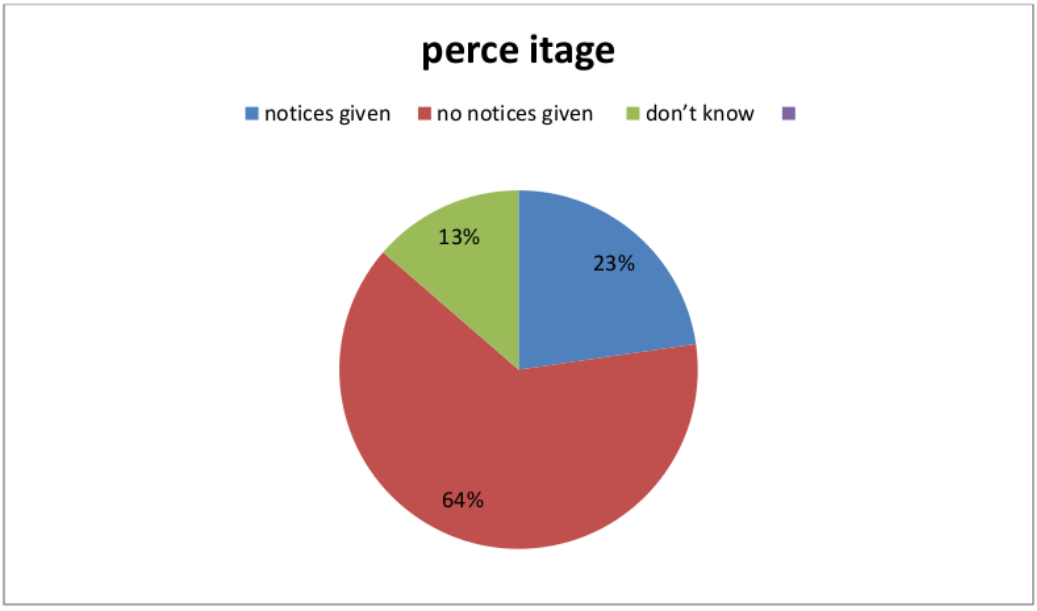
Pie Chart 1: Reasons for non-issuance of pre-emptive notices by percentage



A similar pattern albeit with slightly differing percentages appears when considering the question of whether notices for allocation of public land is given to the general public and interested parties before allocation of land where a lease has expired and land reverted to the government. Only 5 out

of the 22 respondents, accounting for 22.72% of the respondents, stated that such notices are given. Of these 5 respondents, 3 stated that the duration of notices given is 30 days, 1 indicated that notices of 60 days are given while the other 1 respondent did not indicate the duration of the notices. 14 out of the 22 respondents accounting for 63.63% stated that no such notices are given while 3 out of the 22 respondents accounting for 13.63% stated that they did not know whether such notices are given. This is reflected in the pie chart 2 below.

Pie Chart 2: Whether notices for allocation of public land given by percentage



Only three reasons were given for non-issuance of notices to the public and interested parties before allocation of land where a lease has expired were. The reasons given were, (i) the manual nature of the records which makes it difficult to know which leases are about to expire, (ii) lack of laid down procedures or regulations, and (iii) personal interests by those entrusted with the process and who see it as an opportunity to be allocated the land.

The data in this study also illustrates a complex situation on issuance of notices. On one hand, there is need to comply with the requirements of the law to give lessees notices of the expiry of their leases and to the general public regarding allocation of public land. This need is however undermined by both genuine reasons as well as sinister motives. The genuine reasons include the

unavailability of data on all leases in Kenya and their dates of expiry and information that would facilitate the issuance of such notices to lessees. The sinister motives include the desire by the officials involved to benefit from the unavailability of such information by fraudulently processing applications. The fact that Kenyans are secretive on land ownership has not helped the situation. This is a dilemma that the legal mechanisms must resolve and address. Otherwise, they may not be able to give full effect to the aspirations of the Constitution of Kenya, 2010 on land management and administration.

4.4 The Effects of Fraud in the Processing of Extension and Renewal of Leases.

One of the consequences of corruption and fraud in the land sector is that a culture of corruption has been engrained in society. A whole generation or generations have grown in an environment where corruption and fraud is normalised. This is indicated by the fact that Kenya has continued to score very poorly on the corruption indices. For instance, the Transparency International indices for the year 2018 show that in 2018, Kenya slid down one point in the global Corruption Perception Index (CPI) with a score of 27 out of 100. It dropped from 28 points scored in 2017.[24]Kenya was at position 144 out of 180 nations in the list. The statics by Transparency International show that for a period of five years, Kenya has been marking between positions 25 and 28.[25] This implies that efforts to eradicate corruption have not borne any significant fruit.

Kenya's edge to compete economically with other nations is being stymied by high corruption permeating through its entire economy. Because of corruption and fraud, in the processing of extension and renewal of leases and the frequent use of fake land title deeds, the requisite faith and

---

[24] Transparency International, 'Corruption Perception Indices 2017' <https://www.transparency.org/news/feature/corruption_perceptions_index_2017?gclid=EAIaIQobChMIlrKYl5am5QIVBobVCh2sMAnJEAAYASAAEgJ8UvD_BwE>; Peter Kagwanja, 'How corruption is sinking the 'Kenya model' and Uhuru legacy' Daily Nation 10 March 2019<https://www.nation.co.ke/oped/opinion/How-corruption-is-sinking-Uhuru-legacy/440808-5017004-11w0ugn/index.html>accessed on 18 October 2019; Transparency International, 'Press Release, Kenya Registers a Drop in the 2018 Corruption Perception Index'< https://tikenya.org/wp-content/uploads/2019/01/Corruption-Perceptions-Index-2018-Press-Release-1.pdf> accessed on 18 October 2019;

[25] Transparency International, 'Press Release, Kenya Registers a Drop in the 2018 Corruption Perception Index'< https://tikenya.org/wp-content/uploads/2019/01/Corruption-Perceptions-Index-2018-Press-Release-1.pdf> accessed on 18 October 2019.

confidence in the leaseholds is watered down. Transparency International has opined that because of this, having a land title can no longer be taken to mean that one owns a property. Insecurity in the land titles has become a big problem for investors and makes it difficult for the country to allure such investors.[26]

Kenya's economy is mainly dependent on agriculture and land is therefore a critical resource. With many competing needs and uses for land including agriculture, real estate and housing, leasehold should be a useful tool for achieving the efficient and maximal utilization of land and facilitating the objectives of an organised, integrated, sustainable and balanced development espoused by the National Spatial Plan 2015-2045.[27]

The utilisation of leasehold for such goals is however being negated by corruption and fraud in the land sector including the processing of extension and renewal of leases. For instance, over the last couple of years, there has been significant conversation of agricultural land to real estate in counties surrounding Nairobi such as Kiambu, Kajiado and Machakos, which have great potential for agriculture, livestock rearing and industrial expansion. This is fuelled by population growth and land speculation and not necessarily the spatial plans for these counties. Most of the plots are held under leaseholds and the county Governments can use leasehold as a tool, by ensuring that approvals for conversion of land and change of user are only granted within the spatial plan.

Fraud also undermines the Government's capacity to meet societal interests, needs and goals. It also undermines proprietary rights in the eyes and minds of victims of land injustices and the general populace.[28]Fraud in the extension and renewal of leases also undermines and weakens the legal system on administration and management of land. For instance, the Mwathane Commission observed that there were thousands of leases, which had not been renewed or extended. The reason

---

[26] ibid.

[27] This is a national spatial vision that guides the long term spatial development of the country and that defines the general trend and direction of spatial development for the country. The Plan provides national physical planning policies aimed at guiding micro level physical development plans and the attainment of predetermined national social, economic and environmental goals and objectives. See https://www.lands.go.ke/wp-content/uploads/2018/03/National-Spatial-Plan.pdf

[28] Patricia Kameri-Mbote, 'The Land Question in Kenya, Legal and Ethical Dimensions', in Governance: Institutions and the Human Condition, Strathmore University and Law Africa, 2009 219-246.

for this is that lessees became averse to the process and did not know what would happen if they applied to extend or renew their leases.[29]

For immediate lessees, there is pain and loss of being deprived of pre-emptive rights to allocation and therefore proprietary interests and their investments in land. Many lessees have had to incur costs fighting for their interests in land in court proceedings as demonstrated in the cases discussed above. Arguably, these are resources that would otherwise be used for other gainful purposes. Public resources have also been wasted in cases where the institutions dealing with the process have had to defend court proceedings and in some cases been condemned to pay the costs of such proceedings.

4.5 Conclusion

Corruption is a difficult phenomenon to identify, prevent and eradicate. There is not even a universal definition of corruption or even an agreement that it is hazardous. This compounded by the fact that corruption takes place in secrecy makes it difficult to identify, prevent and eradicate. Such is the difficulty with identifying, preventing and eradicating fraud in processing extensions and renewal of leases in Kenya, which is one form of corruption in the land sector with far reaching implications both to the lessees who lose their proprietary rights and interests in leaseholds, the Government and the society.

The data in this study has demonstrated that fraud in the processing of extension and renewal of leases is not an isolated but a major problem. It involves those entrusted with the process and other members of society including the benefactors of the fraud, politicians, brokers/agents and cartels. It also involves trickery, secrecy, cunningness and surprise. Kenya's land management and administration system and mechanisms therefore need to be reviewed to take into account these factors in a comprehensive manner in order to effectively identify, prevent and eradicate corruption and fraud in the processing of extensions and renewal of leases.

---

[29] Government of Kenya, *Report of the Task Force Investigating the Processing of Extension and Renewal of Leases' presented to the Cabinet Secretary Ministry of Lands and Physical Planning* (Government Printer, Nairobi 2017) 34. The Taskforce is commonly known as the Mwathane Taskforce after the name of the Chairman of the taskforce Ibrahim Mwathane (Mwathane Taskforce) 2.

CHAPTER FIVE: CONCLUSIONS AND RECCOMENDATIONS

5.1 Introduction

This chapter provides a summary of the research conclusions and makes recommendations on measures that can be taken to enhance the identification, prevention and eradication of corruption and fraud in the processing of extension and renewal of leases.

5.2 Summary of Conclusions

The general objective of this study was to evaluate the efficacy of the law in addressing fraud in the processing of extension and renewal of leases in Kenya. In particular, the study sought to first analyse the genesis of leasehold tenure and its development in Kenya. It also sought to assess the adequacy of the legal framework in Kenya dealing with the problem of corruption in the processing of extensions and renewal of leases. It also sought to examine the various manifestations of fraud with regard to the processing of extensions renewal of leases; and to evaluate measures that can be taken to enhance the detection, prevention and eradication of corruption. The study made several conclusions.

Land is an important resource in Kenya, and has always played a fundamental role in the social, economic and political matters of Kenyans. It however is a finite resource. It has been at the heart of colonial and postcolonial history in Kenya. It has been a source of many disputes and even violent conflict. It has been described as a fault line in Kenya. With the country's high population growth and competing interests for land, pressure on land will continue to grow. There is need therefore to ensure that land holding, management and administration in Kenya is done in a manner that is equitable, efficient, productive and sustainable. Transparency and accountability in all land transactions including processing extension and renewal of leases is therefore imperative. The law must uphold these values in its letter and spirit.

The pre 2012 land laws and particularly the Government Lands Act which was in colonial times the Crown Lands Ordinance of 1915, was the primary legislation that crystallised the British system of conveyance in Kenya. This legislation gave the President enormous powers to make grants and dispositions of any estates, interests and rights in or over Government land. These powers were abused to make illegal allocations of Government land as political reward or

patronage. The legislation also did not have any clear provisions and guidelines on the procedures for extension and renewal of leases. The omission in the law on the procedures for extension and renewal of leases resulted in confusion and unpredictability in the process and was heavily utilised by the Commissioner of Lands to make illegal and fraudulent grants of leasehold.

Leasehold is one of the four forms of tenure systems in Kenya. It was introduced in Kenya in the last part of the nineteenth century through colonial administrative and legal mechanisms. These colonial administrative and legal mechanisms were used to give effect to exploitation of land belonging to indigenous communities and to promote the welfare of the settler community. They were based on notions of private property rights and registration of ownership. The administrative and legal mechanisms subordinated the indigenous tenure in which natural resources including land were owned communally and transferred through membership to the community, clan or family. At independence, the colonial land system was not dismantled. Instead, they were transferred to the independent government and thereafter found their way with varying degrees to the subsequent regimes. They remain a thorny issue in Kenya land system and law.

Leasehold has since developed and become an important legal instrument for land administration and management. It is flexible and this flexibility makes it a useful device for the realisation of both private goals such as use of land and realisation of investment and societal goals such as planned development, conservation, justice and sustainable use of resources. There is therefore need to promote and strengthen leasehold within the country's property system.

After many years of faltering attempts at land reforms, a new legal dispensation commenced in the year 2010 when the Constitution of Kenya, 2010 was promulgated and land laws passed in 2012. The Constitution of Kenya, 2010 lays general principles for equitable, efficient, productive and sustainable use, holding and management of land. The aspirations in the Constitution of Kenya 2010, are meant to make a clean break from the past. There is now a solid ground on which accountability and transparency in land administration and management must be built.

The Constitution of Kenya, 2010 also changed the governance structure by establishing the National Land Commission, creating two levels of Government and introducing principles of land holding, use and management. The Land Act specifically made provision for pre-emptive rights of

allocation of land after expiry of leasehold and requirements for allocation of public land. Most of the leases made at the end of the 18th Century and in the absence of a legal framework providing for the extension and renewal of leases are due for renewal or extension. The processing of extension and renewal of leases is still problematic. One of the major problem facing the process if corruption and fraud. It is not an isolated but a major problem. The problem has a historical context of a persistent land question and stuttering quest for reform. It requires an answer for the good and stability of the country.

There are still omissions and gaps, inconsistencies, and external factors to the legal framework dealing with the processing extension and renewal of leases. Section 13 of the Lands Act provides for pre-emptory rights of allocation of land to lessees who are Kenyan citizens and is silent on the fate of non-citizens. It does not state what matters should be taken into account in considering applications by non-citizens. Section 13 of the Act also required the NLC to formulate rules and forms prescribing the procedures for extension and renewal of leases but for a period of 4 years there were no rules had been formulated resulting in the NLC and MoLPP dealing with extension and renewal of leases in parallel.

The rules and forms for processing extensions and renewal of leases were eventually formulated in the year 2017. However, the manner in which the rules have been formulated does not fully take into account the deficiencies in the law that have led to fraud in the processing of extension and renewal of leases. The rules are concerned with bureaucracy. They for instance do not state what should happen if the NLC fails to conduct physical verification in a situation where a lessee does not apply for extension or renewal of a lease. They are silent on who should lodge applications for extension and renewal of leases. They do not specify the forms or instruments for making recommendations, approval and the relevant institutions or persons to be consulted. The rules are also inconsistent with Section 13 of the Act as they require the Cabinet Secretary or County Executive Committee Member to decide whether to extend a lease or not while Section 13 of the Act denotes that the decision is that of the NLC.

There is also an inconsistency and conflict between the National Land Policy and the Constitution with regard to the term of leasehold for Kenyan citizens. These are the two main documents that are supposed to inform legislation and practice on land management. The National Land Policy

requires that all leases in Kenya, including those held by Kenyan citizens should be converted to 99 years. The policy therefore precludes anyone including Kenyan citizens from having any leasehold exceeding 99 years. The Constitution of Kenya, 2010 on the other hand only precludes non-citizens from having leaseholds exceeding 99 years.

Corruption and fraud in Kenya is one of the problematic governance issues facing Kenya. It is not purely a problem of law. Corruption is a way of life in Kenya with corrosive effects on the economic, social and political stability of the country. It is however a difficult phenomenon to identify, prevent and eradicate. This is because there are many factors accounting for corruption in society. With regard to the processing of extension and renewal of leases, there are institutional/organisational, personal/individuals and external/environmental factors accounting for fraud in the processing of extension and renewal of leases in Kenya. Institutional/organisational factors include the nature of land records, lack of database on leases in Kenya, bureaucracy, inaction on errant officials and the presence and use of brokers/agents. Personal/individual factors include greed and ineptitude. External/environmental factors include ignorance by landowners and pressure on officials by politicians, brokers/agents and highly connected individuals.

Corruption also involves those entrusted with the process and other members of society including the benefactors of the fraud, politicians, brokers/agents and cartels. It is exercised through trickery, secrecy, cunningness and surprise. Therefore, the monitoring and evaluation of corruption and fraud generally and with regard to land and the processing of extension and renewal of leases in particular needs to be a collective action and an all-inclusive exercise. Kenya's land management system and mechanisms needs review to take into account these factors in a comprehensive manner in order to effectively identify, prevent and eradicate corruption and fraud in the processing of extensions and renewal of leases.

However, law is also not the only tool for controlling society. Other norms can and should be utilised to enhance the detection, prevention and control of corruption and fraud in the society. There is therefore an important place for social values, culture, education, political reforms, religion and other social norms in society. These norms should be enhanced to compliment the law

and the administrative interventions in the detection, prevention and control of corruption and fraud in the land sector and in particular the processing of extension and renewal of leases.

5.3 Recommendations

Based on the above conclusions, this study recommends as follows:-

There is need for Constitutional amendment to reconcile the Constitution of Kenya 2010 with the National Land Policy on the term of leaseholds held by citizens and with a view to enhance the role and importance of leasehold as a factor of production and facilitating optimal land use rather than ownership.

The legal framework needs to be reviewed with a view to enhance the detection, prevention and control of corruption in the processing of extension and renewal of leases. The study recoomends the following legislative changes:-

1. The Land (Extension and renewal of leases) Rules should be revised to ensure that the lessees or the legal administrators of their estates or their advocates only, make the applications for extensions and renewal of leases. The submission of the applications should be accompanied by the identification documents of the registered lessees or their legal administrators.

2. The rules should be revised to ensure that the applications for extension and renewal of leases are considered by the NLC as envisaged by section 13 and 14 of the Land Act. The role of the Cabinet Secretary and County Executive Committee Members should be to advise the Commission through a prescribed form/instrument on matters such as whether the national or county Government requires land in respect of which applications for extension and renewal of leases have been made for public use.

3. The rules should also be revised to specify the relevant institutions or persons that the NLC consult. They should also prescribe the form/instrument for making recommendation and the form/instrument of approval.

4. The rules should be revised to include other forms of communication or notices to lessees to include email, FM announcements and village barazas, which are some of the current and easy methods of communication in the advent of technology.

5. The rules should be revised to ensure that applications, access to and conclusion of all land related services are at the county level including the processing of extension and renewal of leases.

6. The rules should be revised to clearly stipulate the rationale for requisition of land already under leasehold for public purposes and overriding the pre-emptive rights of lessees.

7. The rules should be revised to state what should happen if the NLC fails to issue notices or conduct ground inspections.

8. The Land Act and regulations should be amended to give a grace window of five years for the lessees to apply for renewal of the leases. This recommendation is made in in view of the thousands of leaseholds that have not been renewed because of ignorance or lessees being afraid of what would happen to their leaseholds, and the provision in regulation 5 that such leases can only be extended or renewed for public purposes.

9. The Land Act should be revised to provide for the appointment to the Independent Appeal Committees and provide the criteria for appointment. It is proposed that appointment to the Committees should be done competitively.

10. There should be robust data management laws to provide for the integrity, access and continuous updating and storage of data for use by the government agencies.

Because law is by itself insufficient for the identification, prevention and eradication of corruption and fraud, the study recommends that the following institutional and administrates measures are taken:-

1. Establishment of a robust land information management system linking all actors in the processing of extension and renewal of leases. Such a system would minimize bureaucracy, promote expedient sharing of records and information through online

transmission, eliminate the involvement of land brokers/agents, and promote predictability, tracking and communication with clients;

2. Development of a mega data base of all land and ownership in Kenya;
3. Development of a digital tracking system of file movement.
4. Transfer or re-deployment of officials involved in the processing of extension and renewal of leases. Officials who have been involved in this exercise for more than three years should be transferred to other ministries or departments and replaced by new thoroughly vetted and trained officials from other ministries or departments;
5. Prosecution and dismissal of delinquent officials implicated in fraud and corruption.
6. Naming and rewarding faithful and diligent officials. This should help build and inculcate positive culture and pride in virtue thus influence on others and retrospection of the wayward officials.
7. Improving the work environment and remuneration for the officials;
8. Strict enforcement of all procedures and regulations;
9. Sensitization of members of the public by land administration and management officials; and training for the officials on the new regulations and legal requirements.
10. Promotion and sensitization of members of the public on the potential of leasehold over private land as a means of access to and use of land to counter the impulsive desire by Kenyans to own land.

This study also recommends the promotion of social mechanisms for the prevention, identification or eradication of corruption. These include:-

1. The introduction of integrity, ethics and morals lessons in the education system right from primary school, through which children can be educated on the dangers and implications of corruption from an early age;

2. Counseling sessions on the subject of corruption to be conducted in institutions dealing with land matters to enable the officials have self-reflection; and
3. Civic education to communities on land matters to empower them to monitor public resources including land.

BIBLIOGRAPHY.

Articles and Journal Articles

Akcay S, 'Corruption and Human Development' (2006) CATO Journal Vol 26 (1) 29-48.

Benedetto M.D, 'Corruption and Controls' (2015) European Journal of Law Reform 17(4) 479-501.

Boone C, 'Land Conflict and Distributive Politics in Kenya' (April 20212) African Studies Review Vol 55(1) 75-103.

Boone C, Dyzenhaus A, Ouma S, Galeri C, et al; 'Land Politics under the new Constitution: Counties, Devolution, and the National Land Commission' (October 2016) LSE ISSN 1470-2320, No 16-178.

Booth P, 'From Property Rights to Public Control: The Quest for Public Interest in the Control of Urban Development' The Town Planning Review, (2002) Vol. 73 No. 2 153-170 < https://www.jstor.org/stable/40112499> accessed 16 October 2019.

Lambsdorff J.G, 'Corruption and Rent-Seeking' (2002) Public Choice 113 97-125 http://www.jstor.org/stable/30025775'.

Lambsdorff J.G, 'Making Corrupt Deals: Contracting in the Shadow of the Law' (2002) Journal of Economic Bahaviour & Organization Vol 48 221-241.

Clark C.E, 'The Function of Law in a Democratic Society' (1942) University of Chicago Law Review 393.

Coldham SFR, 'Land-Tenure Reform in Kenya: The Limits of Law' (1979) 17 Journal of Modern African Studies 615.

Dudziak M.L, 'Working Toward Democracy: Thurgood Marshall and the Constitution of Kenya' (December 2006) Duke Law Journal Vol 56(3) 721-780.

Githinji M and Holmquist F, 'Default Politics of Ethnicity in Kenya', (2009) Brown Journal of World Affaris Vol XVI(I)101-117.

Haberson J, 'Land Reforms and Politics in Kenya, 1954-70' (1971) Journal of Modern Studies Vol 9(2) 231.

Harrington J and Manji A, 'Satire and the Politics of Corruption in Kenya' (2013) Social & Legal Studies 22(1) 3-23.

Haugerud A, 'Land Tenure and Agrarian Change in Kenya' (1989) Africa 59(1) 61-90.

Johnston M, 'Why Do so Many Anti-Corruption Efforts Fail' (2012) Nyu Annual Survey off American Law Vol 67 467-496.

Kamau C, 'Transitional Justice as a Path to Distributive Justice: A Jurisdictional and Legal Case for Land Restitution in Kenya' (2016) Strathmore Law Review 25-52

Kameri-Mbote p, 'The Land Question in Kenya: Legal and Ethical Dimensions' (2009) International Environmental Law Research Centre< http://www.ielrc.org/content/a0910.pdf>accessed on 28 November 2017.

Kameri-Mbote P and Kindiki , 'Trouble in Eden: How and Why Unresolved Land Issues Landed 'Peace-full Kenya' in Trouble' (2008) Forum for Development Studies Vol 35(2) 167-193.

Kanyingi K, 'Beyond the Colonial Legacy: The Land Question, Politics and Constitutionalism in Kenya' in Smokin Wanjala (ed) *Essays on Land Law: The Reform Debate in Kenya* (Faculty of Law, University of Nairobi, 2000) 45-60.

Karanja SK, 'Land Restitution in the Emerging Kenyan Transitional Justice Process' (2010) 28(2) Nordic Journal of Human Rights 177-201.

Kenya Land Alliance, 'A Critical Analysis of the Report of the Presidential Commission of Inquiry into the Land Law System of Kenya: Sampled Reaction' (2003)

Kibugi R 'A Failed Land use Legal and Policy Framework for the African Commons? Reviewing Rangeland Governance in Kenya', (2009) Journal of Land Use & Environmental Law, Vol 24(2), 309–336

Kieyah J, 'Indegenous People's Land Rights in Kenya: A Case Study of the Massai and Ogiek People' (2007) Vol 15(3) Penn State Environment Law Review 397.

Manji J.H, 'Satire and the Politics of Corruption in Kenya' (2013) 22 social & Legal

Studies 3.

Manji A, 'The Politics of Land Reform in Kenya 2012' (2014) African Studies Assocoation 115-130

Matthews K & Coogan W.H, 'Kenya and the Rule of Law: The Perspective of two Volunteers' (2008) 60 Me. L. Rev 561.

Muiu M, 'Colonial and Postcolonial State and Development in Africa' (2010) Social Research Vol 77(4) 1311-1338.

Munyae M.M and Mulinge M.M, 'The Centrality of a Historical Perspective to the Analysis of Modern Social Problems in Sub-Saharan Africa: A Tale From Two Case Studies' (1999) Journal of Social Development in Africa 14(2) 51-70.

Musembi C.N, 'De Soto and Land Relations in Rural Africa:Breathing Life into Dead Theories About Property Rights' (2007) Third World Quarterly Vol 28(8) 1457-1478.

Musembi C.N and Kameri-Mbote P, 'Mobility, Marginality and Tenure Transformation in Kenya: Explorations of Community Property Rights in Law and Practice' (2013) Nomadic Peoples Vol 17(1) 5-32.

Mwavule J.M 'The Ten Miles Coastal Strip: An Examination of the Intricate Nature of Land Question at Kenyan Coast' (2011) International Journal of Humanities and Social Sciences Vol 1(20) 176-182.

Mweseli T. 'The Centrality of land in Kenya: Historical Background and Legal Perspective': *Essays on Land Law*. *The Reform Debate in Kenya* (Smokin Wanjala ed University of Nairobi 2000).

Nilsson C, 'Corruption in Kenya' (2009) 1 STVK.

Ocheje P, 'A Theory of Self-Enforcing Anti-Corruption Legislation in Africa' (2011) Law and Development Review Vol 4(3) 238-280.

Odote C, 'The Dawn of Uhuru? Implications of Constitutional Recognition of Communal Land Rights in Pastoral Areas of Kenya' (2013) Nomadic Peoples Vol 17(1) 87-103.

Ogendo H.W.O, 'The Politics of Constitutional Change in Kenya Since Independence, 1963-69 (1972) African Affairs Vol 71(282) 9-34.

Ogendo H.W.O, 'The Tragic African Commons: A Century of Exploitation, Suppression and Subversion', (2003) University of Nairobi Law Journal Vol 1 107-117.

Onyango P.O, 'Balancing of Rights in Land Law: A Key Challenge in Kenya' (2014) Sociology and Anthropology 2(7) 301-308

Persson A, Rothstein B and Teorell J, 'Why Anticorruption Reforms Fail-Systemic Corruption as a Collective Action Problem' (2013) Governance: An International Journal of Policy, Administration, and Institutions 26(3), 449–471.

Ross S a., 'The Economic Theory of Agency: The Principal's Problem' (1973) 63 The American Economic Review 134 http://www.jstor.org/stable/1817064

Sandgren C, 'Combating Corruption: The Misunderstood Role of Law' (2005) The International Lawyer Vol 39(3) 717

Southall R, 'The Ndungu Report : Land & Graft in Kenya Author (S): Roger Southall Source : Review of African Political Economy , Vol . 32 , No . 103 , Imperialism & African Social Formations (Mar 2005), Pp142-151 Stable URL : http://www.jstor.org/stable/4006' (2017) 32 142

Summers R.S; 'How law is formal and why it matters' July 1997 Cornell Law Review, Volume 82 5

Syagga P, 'Public Land: Historical Land Injustices and the New Constitution Injustices and the New Constitution' Society for International Development, Constitution Working Paper No. 9.

Thomas D.A, 'Anglo-American Land Law: Diverging Developments from a Shared History: Part III: British and American Real Property Law and Practice-A contemporary Comparison' Real Property, Probate and Trust Journal, (Fall 1999), Vol. 34, No. 3 443-516 (449) < https://www.jstor.org/stable/20782192> accessed 16 October 2019.

Wanjala S.C. 'Land Ownership and Use in Kenya: Past, Present and Future': *Essays on Land Law: The Reform Debate in Kenya*, (University of Nairobi, 2000).

Wanyande P, Asingo P.O, and Walter O. Oyugi: 'The Politics of Transition in Kenya, 1992-2003: Democratic Consolidation or Deconsolidation?' Heinrich Böll Foundation, 2003<https://ke.boell.org/sites/default/files/thepoliticsoftransitioninkenyapublication.pdf >

Wayumba G, 'A Historical Review of Land Tenure Reforms in Kenya' (2015) International Journal of Science and Engineering Studies (IJSRES) Vol 2(1) 45.

Yingling M.P, 'Conventional and Unconventional Corruption' (2013) Vol 51 Duquesne Law Review 263.

Books and Book Chapters

Burn E.H and Cartwright J, *Modern Law of Real Property* (17th ed, Oxford, 2006).

Hornsby C, '*Kenya: A History since Independence*' (I.B.Tauris London 2012).

Kameri-Mbote P, *Property Rights and Biodiversity Management in Kenya: The Case of Land Tenure and Wildlife* (Acts Press, Nairobi 2002).

Kariuki F, Ouma S and Ng'etich R, *Property law*, Strathmore University press (2016).

Leys C, *Underdevelopment in Kenya: The Political Economy of Neo-colonialism 1964-1971* (first published 1975, EAE Publishers, 1994).

Klitgaard R, *Controlling Corruption* (University of California Press, Ltd 1988).

Lawson F.H and Rudden B, *The Law of Property* (rev 3rd ed Oxford, 2002).

Munzer S, *A Theory of Property* (Cambridge University Press, 1990).

Mugenda O and Mugenda A, *Research Methods* (Acts Press, 1999).

Muigua K, Wamukoya D and Kariuki F, *Natural Resources and Environmental Justice In Kenya* (Glenwood Publishers, 2015).

Odote C, Breaking the Mould: *Lessons for Implementing Community Land Rights in Kenya*, (Stathmore University Press, 2016).

Ogendo H.W.O, *Tenants of the Crown: Evolution of the Agrarian Law and Institutions in Kenya* (African Centre for Technology Studies 1991.

Olson M, *The Logic of Collective Action* (Cambridge 1965) <https://books.google.nl/books?id=jv8wTarzmsQC>.

Onalo P.L, *Land Law and Conveyancing in Kenya* Heinemann Kenya, Nairobi 1986) c 2.

Rose-Ackerman S, *Corruption: A Study in Political Economy* (Academic Press 1978)

Sorrenson M.P.K, *Settlement in Kenya*: *Origins of European Settlement in Kenya*, Nairobi O.U.P 1968.

Internet Sources

Alina Mungiu-Pippidi, Masa Loncaric, Bianca Vaz Mundo, Ana Carolina Sponza Braga, Michael Weinhardt et el 'Contextual Choices in Fighting Corruption: Lessons Learned' (2011)< https://www.oecd.org/countries/vietnam/48912957.pdf> accessed on 28 August 2018.

Bauhr M and Nasiritousi N, 'Why Pay Bribes ? Collective Action and Anticorruption Efforts' [2011] QOG - University of Gothenbourg<https://www.qog.pol.gu.se/digitalAssets/1357/1357856_2011_18_bauhr_nasiritousi.pdf>accessed on 28 August 2018.

Gachiri J, 'Surveyors warn governors Kabogo, Chepkwony on foreign leases' *Business Daily* (Nairobi 26 July 2015) <https://www.businessdailyafrica.com/markets/Surveyors-warn-governors-on-foreign-leases/539552-2809962-de5nh7z/index.html> accessed on 16 October 2019.

Marquette H & Peiffer C, 'Collective Action and Systemic Corruption' (2015) University of Warsaw Workshop Paper 19,< https://ecpr.eu/Filestore/PaperProposal/b5944a31-85b6-4547-82b3-0d4a74910b07.pdf> accessed 28 August 2018.

Transparency International, 'Corruption Perception Indices 2017' <https://www.transparency.org/news/feature/corruption_perceptions_index_2017?gclid=EAIaIQobChMIlrKYl5am5QIVBobVCh2sMAnJEAAYASAAEgJ8UvD_BwE>.

Transparency International, 'Press Release, Kenya Registers a Drop in the 2018 Corruption Perception Index'< https://tikenya.org/wp-content/uploads/2019/01/Corruption-Perceptions-Index-2018-Press-Release-1.pdf> accessed on 18 October 2019.

Government and Institutions Reports

Government of Kenya, Report of Commission of Inquiry into the Post Election Violence Government Printer, (16 October 2008)' http://reliefweb.int/report/kenya/kenya-commission-inquiry-post-election-violence-cipev-final-report.

Government of Kenya, 'Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land' Government Printer (June 2004).

Government of Kenya, *Sessional Paper No 3 of 2009 on National Land Policy* (August 2009).

Government of Kenya, *Report of the Task Force Investigating the Processing of Extension and Renewal of Leases' presented to the Cabinet Secretary Ministry of Lands and Physical Planning* (Government Printer, Nairobi 2017).

Government of Kenya, *Report of the Commission of Inquiry into the Land Law System of Kenya on Principles of a National Land Policy Framework Constitutional Position of Land and New Institutional Framework for Land Administration* (Government Printer, Nairobi 2002).

Research Papers

Bresnahan D.P, *Sacred Spaces, Political Authority, and the Dynamics of Tradition in Mijikenda History*: A Thesis Presented to the Faculty of the College of Arts and Sciences of Ohio University in Partial Fulfillment of the Requirements for the Degree Master of Arts (June 2010).

Nzomo P.S, *An investigation into land registration process and its effects on urban land development,* Project Paper submitted in partial fulfillment for the award of Bachelors of Arts degree in Land Economics at the University of Nairobi (July, 2008).

APPENDICIES

APPENDIX I: RESEARCH QUESTIONNAIRE

An evaluation of the efficacy of land laws in addressing fraud in the processing of extension and renewal of leases in Kenya.

This questionnaire is to facilitate the researcher to collect data on the above mentioned topic in partial fulfillment of his study for a Masters of Law degree. The information obtained here will be used for research purposes only and will be treated with utmost confidence. The researcher is requesting you to fill the questionnaire with honesty and objectivity. Kindly do not indicate personal details anywhere in this questionnaire. Your participation in facilitating the research is highly appreciated.

Kindly tick or mark as appropriate answers in the blank spaces provided

Section I: General information

1. What is your gender?

Male [ ] Female [ ]

2. What is your age bracket?

Below 25 years [ ]

26 – 30 years [ ]

31 – 40 years [ ]

41 – 50 years [ ]

51 years and above [ ]

3. How long have you worked in this organization?

5 yrs and below [ ]

6- 10 years [ ]

11-15 years [ ]

16- 20 years [ ]

21 years and over [ ]

4. What is your highest level of education?

KCSE Certificate [ ]

Diploma [ ]

Undergraduate [ ]

Masters [ ]

PhD [ ]

5. What is your salary scale (Gross)

Ksh 10,000 – 100,000 [ ]

Ksh 100,000 – 200,000 [ ]

Ksh 200,000 – 200,000 [ ]

Over 200,000 [ ]

6. Which department do you work in?

Lands [ ]

Survey [ ]

Physical Planning [ ]

Adjudication [ ]

7. Have you ever participated in the renewal and extension of leases process in your organization?

Yes [ ]

No (if no to Section II) [ ]

8. How long have you been involved in the renewal and extension of leases process?

Less than 1 year [ ]

1 to 5 years [ ]

5 to 10 years [ ]

Over 10 years [ ]

Section II:

Process and procedures.

9. In your opinion what could be the factors that lead to fraud in the processing of renewal and extension of leases in your department?

---

10. Are there procedural requirements that are not followed by officers in your department in processing renewal and extension of eases? If yes, please list them.

---

11. What would you say is the impact of not following such procedural requirements on fraud in your department?

---

12. Are people regularly informed of their preemptive rights to allocation of land before their leases expire?

Yes [ ]

Don't know [ ]

No [ ]

13. If yes, what is the duration of the notice that is given?

---

14. If no, what are the reasons for not giving the notice? Kindly list them.

---

15. Is notice given to the public and interested parties before allocation of land where a lease has expired and land reverted to the Government?

Yes [ ]

Don't know [ ]

No [ ]

16. If yes, what is the duration of the notice that is given?

---

17. If no, what are the reasons for not giving the notice? Kindly list them.

---

18. What mechanisms are taken by your department to verify that applications for extension and renewal of leases are by genuine lessees in occupation/possession of land? Kindly list them.

Section III:

Involvement of public officials.

19. In your opinion what are the fraudulent activities that officers in your department engage in, in the processing of extension and renewal of leases?

---

20. Are officials in your department put under pressure to process fraudulent extension or renewal of leases?

Yes [ ]

Don't know [ ]

No (if no go to section IV) [ ]

21. If yes, who are the people who mostly put pressure on the officials in your department? **Please do not give peoples' names**.

---

22. How are officials who engage in corruption viewed and dealt with in your department?

Section IV: Proposals for reform or solutions

23. What changes would you recommend for your department with a view to prevent, identify or eradicate fraud in the processing of renewal and extension of leases? Please list them.

---

24. What actions would you recommend to be taken against officers in your department who are involved in the fraudulent processing of extension and renewal of leases?

---

25. What social mechanisms would you recommend for the prevention, identification or eradication of corruption in Kenya? Please list them.

APPENDIX II: INTERVIEW GUIDE (for the Land Fraud Unit Officials based in Nairobi)

Introduce the interview and ask questions guided by the following questions:-

1. What would you say is the prevalence of fraud in the process of extension and renewal of leases in Kenya?
2. In your opinion, why is there such prevalence of fraud regarding extension and renewal of leases?
3. Would you say that the enactment of the land laws 2012 has had a bearing on the prevalence? If yes, how? If no, why?
4. What are some of the manifestations of fraud in relation to the extension and renewal of leases?
5. Of these ones, which are the most common?
6. How many cases of fraud relating to extension and renewal of leases have you handled?
7. How many investigations have been concluded in that period?
8. How many prosecutions have been instituted in that period?
9. What are the challenges that affect investigation and prosecution of fraud in land cases?
10. Are there any unique challenges that affect investigation and prosecution of fraud relating to the extension of renewal of leases? If yes, which ones? If no, why
11. Are there any challenges in the legal framework that affect investigation and prosecution of fraud in land cases? If yes, which ones? If no, why?
12. What is the influence of politics and political goodwill on efficiency in your investigation and of fraud in land cases?
13. Does external interference influence investigation and prosecution of corruption in land cases? If yes, how? If no, why?
14. Does your Unit have operational independence and freedom from political interference? If yes, explain how? If no, why do you think so?
15. Is staff shortage a factor in your investigations of fraud in land cases?
16. What are some of the weaknesses in the Kenyan law that water down its effectiveness in fighting fraud in land cases?
17. What legal, institutional and operational reforms could be undertaken to improve efficiency of your Unit in investigating fraud in land cases?
18. In your opinion should investigatory and prosecutorial powers vested in one body? If yes, explain how? If no, why do you think so?

AN EVALUATION OF THE EFFICACY OF LAW IN ADDRESSING FRAUD IN THE PROCESSING OF EXTENSION AND RENEWAL OF LEASES IN KENYA

ORIGINALITY REPORT

13%	8%	4%	10%
SIMILARITY INDEX	INTERNET SOURCES	PUBLICATIONS	STUDENT PAPERS

PRIMARY SOURCES

1	Submitted to Kenyatta University Student Paper	1%
2	www.ldgi.org Internet Source	1%
3	Submitted to Mount Kenya University Student Paper	1%
4	Submitted to UNIVERSITY OF LUSAKA Student Paper	1%
5	www.ielrc.org Internet Source	<1%
6	kenyalaw.org Internet Source	<1%
7	www.tandfonline.com Internet Source	<1%
8	Submitted to Strathmore University Student Paper	<1%

9	equalinrights.pbworks.com Internet Source	<1%
10	uonlj.uonbi.ac.ke Internet Source	<1%
11	Submitted to National University Of Science and Technology Student Paper	<1%
12	Submitted to Symbiosis International University Student Paper	<1%
13	www.hrpub.org Internet Source	<1%
14	Submitted to NALSAR University of Law Hyderabad Student Paper	<1%
15	www.scribd.com Internet Source	<1%
16	botanymwamuye.blogspot.com Internet Source	<1%
17	www.taxjustice-and-poverty.org Internet Source	<1%
18	Submitted to Midlands State University Student Paper	<1%
19	Submitted to Sharda University Student Paper	<1%

20	Submitted to Bindura University of Science Education Student Paper	<1%
21	LexisNexis Publication	<1%
22	repository.ubn.ru.nl Internet Source	<1%
23	eprints.qut.edu.au Internet Source	<1%
24	Submitted to United Nations University Student Paper	<1%
25	Submitted to University of New South Wales Student Paper	<1%
26	npi-africa.org Internet Source	<1%
27	41.89.160.13:8080 Internet Source	<1%
28	journals.sagepub.com Internet Source	<1%
29	Submitted to Rivers State University of Science & Technology Student Paper	<1%
30	www.cambridge.org Internet Source	<1%

31	www.ilo.org Internet Source	<1%
32	dspace.nwu.ac.za Internet Source	<1%
33	Submitted to Copperbelt University Student Paper	<1%
34	Submitted to University of Northampton Student Paper	<1%
35	www.subtitles.gr Internet Source	<1%
36	ayerangagodfreyblog.files.wordpress.com Internet Source	<1%
37	Submitted to Jagran Lakecity University Student Paper	<1%
38	kmco.co.ke Internet Source	<1%
39	pt.scribd.com Internet Source	<1%
40	Submitted to Yeungnam University Student Paper	<1%
41	Submitted to European University of Lefke Student Paper	<1%
42	Patricia Kameri-Mbote, Kithure Kindiki. "Trouble	

	in Eden: How and Why Unresolved Land Issues Landed ‘Peaceful Kenya’ in Trouble in 2008", Forum for Development Studies, 2008 Publication	<1%
43	www.clarionkenya.org Internet Source	<1%
44	"Recent Scholarship", The Journal of American History, 2000. Publication	<1%
45	Submitted to University College London Student Paper	<1%
46	documents.mx Internet Source	<1%
47	uir.unisa.ac.za Internet Source	<1%
48	Submitted to Walter Sisulu University Student Paper	<1%
49	epub.uni-bayreuth.de Internet Source	<1%
50	static1.squarespace.com Internet Source	<1%
51	Submitted to North West University Student Paper	<1%
52	www.oxfam.org.uk Internet Source	<1%

53	Submitted to University of Bristol Student Paper	<1%
54	Submitted to University of Nairobi Student Paper	<1%
55	Submitted to Westminster International University in Tashkent Student Paper	<1%
56	Submitted to National Law School of India University, Bangalore Student Paper	<1%
57	Catherine Boone. "Land Conflict and Distributive Politics in Kenya", African Studies Review, 2013 Publication	<1%
58	www.standardmedia.co.ke Internet Source	<1%
59	Submitted to University of Cape Town Student Paper	<1%
60	Submitted to University of Lincoln Student Paper	<1%
61	www.uonsalar.org Internet Source	<1%
62	www.coursehero.com Internet Source	<1%
63	portal.research.lu.se	

	Internet Source	<1%
64	en.wikipedia.org Internet Source	<1%
65	Submitted to London School of Economics and Political Science Student Paper	<1%
66	hdl.handle.net Internet Source	<1%
67	pure.royalholloway.ac.uk Internet Source	<1%
68	Submitted to Masinde Muliro University of Science and Technology Student Paper	<1%
69	eap.uonbi.ac.ke Internet Source	<1%
70	www.cmi.no Internet Source	<1%
71	Submitted to La Trobe University Student Paper	<1%
72	issuu.com Internet Source	<1%
73	"Corruption and Norms", Springer Science and Business Media LLC, 2018	<1%

	Publication	
74	Submitted to HELP UNIVERSITY Student Paper	<1%
75	Submitted to Leiden University Student Paper	<1%
76	Submitted to University of Portsmouth Student Paper	<1%
77	Submitted to Birkbeck College Student Paper	<1%
78	Submitted to Roehampton University Student Paper	<1%
79	Submitted to Southeast Community College Student Paper	<1%
80	Submitted to Damodaram Sanjivayya National Law University Student Paper	<1%
81	Paul D. Ocheje. "When Law Fails: A Theory of Self-Enforcing Anti-Corruption Legislation in Africa", The Law and Development Review, 2011 Publication	<1%
82	es.scribd.com Internet Source	<1%
83	www.oxfordislamicstudies.com Internet Source	<1%

84	www.fao.org Internet Source	<1%
85	scholarworks.waldenu.edu Internet Source	<1%
86	docplayer.net Internet Source	<1%
87	nrl.northumbria.ac.uk Internet Source	<1%
88	Submitted to University of Bath Student Paper	<1%
89	www.hrw.org Internet Source	<1%
90	Submitted to University of York Student Paper	<1%
91	Submitted to University of Wollongong Student Paper	<1%
92	Submitted to University of Queensland Student Paper	<1%
93	Submitted to University of South Africa Student Paper	<1%
94	readinglists.le.ac.uk Internet Source	<1%
95	www.knjenga.co.ke	

	Internet Source	<1%
96	springerplus.springeropen.com Internet Source	<1%
97	saharatribune.com Internet Source	<1%
98	Álvaro Enríquez-de-Salamanca. "Stakeholders' manipulation of Environmental Impact Assessment", Environmental Impact Assessment Review, 2018 Publication	<1%
99	Submitted to University of Arizona Student Paper	<1%
100	lup.lub.lu.se Internet Source	<1%
101	brill.com Internet Source	<1%
102	David Jancsics. "Imperatives in informal organizational resource exchange in Central Europe", Journal of Eurasian Studies, 2015 Publication	<1%
103	Submitted to Eiffel Corporation Student Paper	<1%
104	Submitted to University of Leeds Student Paper	<1%

105	Submitted to Higher Education Commission Pakistan Student Paper	<1%
106	Ainhoa González Del Campo, Paola Gazzola, Vincent Onyango. "The mutualism of strategic environmental assessment and sustainable development goals", Environmental Impact Assessment Review, 2020 Publication	<1%
107	link.springer.com Internet Source	<1%
108	www.fig.net Internet Source	<1%
109	Submitted to University of Sussex Student Paper	<1%
110	Carson, Lindsey D., and Mariana Mota Prado. "Using Institutional Multiplicity to Address Corruption as a Collective Action Problem: Lessons from the Brazilian Case", The Quarterly Review of Economics and Finance, 2016. Publication	<1%
111	Submitted to KTH - The Royal Institute of Technology Student Paper	<1%
112	www.nrcresearchpress.com Internet Source	<1%

113	admin.14upazilaudd.gov.bd Internet Source	<1%
114	Submitted to Loughborough University Student Paper	<1%
115	Submitted to Federal University of Technology Student Paper	<1%
116	digitalcommons.law.seattleu.edu Internet Source	<1%
117	etheses.lse.ac.uk Internet Source	<1%
118	theses.gla.ac.uk Internet Source	<1%
119	abcjournal.org Internet Source	<1%
120	Submitted to University of KwaZulu-Natal Student Paper	<1%
121	www.doingbusiness.org Internet Source	<1%
122	www.igi-global.com Internet Source	<1%
123	www.nat-hazards-earth-syst-sci.net Internet Source	<1%
124	www.landentwicklung-muenchen.de	

	Internet Source	<1%
125	slidelegend.com Internet Source	<1%
126	law.fsu.edu Internet Source	<1%
127	ir.jkuat.ac.ke Internet Source	<1%
128	onlinelibrary.wiley.com Internet Source	<1%
129	doowop-net.com Internet Source	<1%
130	www.landcommission.go.ke Internet Source	<1%
131	www.thelandplatform.com Internet Source	<1%
132	minorityrights.org Internet Source	<1%
133	Submitted to Mancosa Student Paper	<1%
134	www.draba.org Internet Source	<1%
135	www.maasaierc.org Internet Source	<1%

136	journalofcmsd.net Internet Source	<1%
137	Submitted to Fachhochschule fuer Wirtschaft Berlin Student Paper	<1%
138	www.nation.co.ke Internet Source	<1%
139	Submitted to University of Bradford Student Paper	<1%
140	www.in-limine.eu Internet Source	<1%
141	Submitted to University of Cambridge International Examinations Student Paper	<1%
142	Submitted to Kampala International University Student Paper	<1%
143	pdfs.semanticscholar.org Internet Source	<1%
144	Submitted to Ghana Technology University College Student Paper	<1%
145	Submitted to Asia e University Student Paper	<1%
	Submitted to Aligarh Muslim University, Aligarh	

146	Student Paper	<1%
147	Submitted to University of Petroleum and Energy Studies Student Paper	<1%
148	Submitted to Zambia Centre for Accountancy Studies Student Paper	<1%
149	Submitted to Open University Malaysia Student Paper	<1%
150	Submitted to National Economics University Student Paper	<1%
151	Submitted to Buckinghamshire Chilterns University College Student Paper	<1%
152	muse.jhu.edu Internet Source	<1%
153	Submitted to Coventry University Student Paper	<1%
154	etheses.whiterose.ac.uk Internet Source	<1%
155	repository.up.ac.za Internet Source	<1%
156	S. R. Simpson. "Land Law in East Africa. By	<1%

Krishan M. Maini. Nairobi, etc.: O.U.P., 1967. 270 pp. 60s.", Journal of African Law, 2009
Publication

157	www.hakinetwork.org Internet Source	<1%
158	www.abanetwork.com Internet Source	<1%
159	ijecm.co.uk Internet Source	<1%
160	Submitted to University of Kent at Canterbury Student Paper	<1%
161	yeauganda.files.wordpress.com Internet Source	<1%
162	www.klinikarastirmalar.org Internet Source	<1%
163	www.idunn.no Internet Source	<1%
164	idl-bnc.idrc.ca Internet Source	<1%
165	Submitted to Macquarie University Student Paper	<1%
166	chss.uonbi.ac.ke Internet Source	<1%

Submitted to Lake-Sumter Community College

167	Library Student Paper	<1%
168	Submitted to Kisii University Student Paper	<1%
169	Submitted to University of Wales Institute, Cardiff Student Paper	<1%
170	Submitted to Pune Institute of Business Management Student Paper	<1%
171	Submitted to University of Edinburgh Student Paper	<1%
172	Submitted to Universiti Teknologi MARA Student Paper	<1%
173	Prisca Mbura Kamungi. "The politics of displacement in multiparty Kenya", Journal of Contemporary African Studies, 07/2009 Publication	<1%
174	"Kenya After 50", Springer Science and Business Media LLC, 2016 Publication	<1%

Exclude quotes	Off	Exclude matches	Off
Exclude bibliography	On		

AN EVALUATION OF THE EFFICACY OF LAW IN ADDRESSING FRAUD IN THE PROCESSING OF EXTENSION AND RENEWAL OF LEASES IN KENYA

GRADEMARK REPORT

FINAL GRADE

/0

GENERAL COMMENTS

Instructor

PAGE 1

PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6

PAGE 7

PAGE 8

PAGE 9

PAGE 10

PAGE 11

PAGE 12

PAGE 13

PAGE 14

PAGE 15

PAGE 16

PAGE 17

PAGE 18

PAGE 19

PAGE 20

PAGE 21

PAGE 22

PAGE 23

PAGE 24

PAGE 25

PAGE 26

PAGE 27

PAGE 28

PAGE 29

PAGE 30

PAGE 31

PAGE 32

PAGE 33

PAGE 34

PAGE 35

PAGE 36

PAGE 37

PAGE 38

PAGE 39

PAGE 40

PAGE 41

PAGE 42

PAGE 43

PAGE 44

PAGE 45

PAGE 46

PAGE 47

PAGE 48

PAGE 49

PAGE 50

PAGE 51

PAGE 52

PAGE 53

PAGE 54

PAGE 55

PAGE 56

PAGE 57

PAGE 58

PAGE 59

PAGE 60

PAGE 61

PAGE 62

PAGE 63

PAGE 64

PAGE 65

PAGE 66

PAGE 67

PAGE 68

PAGE 69

PAGE 70

PAGE 71

PAGE 72

PAGE 73

PAGE 74

PAGE 75

PAGE 76

PAGE 77

PAGE 78

PAGE 79

PAGE 80

PAGE 81

PAGE 82

PAGE 83

PAGE 84

PAGE 85

PAGE 86

PAGE 87

PAGE 88

PAGE 89

PAGE 90

PAGE 91

PAGE 92

PAGE 93

PAGE 94

PAGE 95

PAGE 96

PAGE 97

PAGE 98

PAGE 99

PAGE 100

PAGE 101

PAGE 102

PAGE 103

PAGE 104

PAGE 105

PAGE 106

PAGE 107

PAGE 108

PAGE 109

PAGE 110

PAGE 111

PAGE 112

PAGE 113

PAGE 114

PAGE 115

PAGE 116

PAGE 117

PAGE 118

PAGE 119

PAGE 120

PAGE 121

PAGE 122

PAGE 123

PAGE 124

PAGE 125