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THE ROLE OF ESTATE AGENTS IN
HOUSING MARKET

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SUMMARY

This paper which has been written at a rather short notice from the seminar organisers, discusses the role of Estate agents in housing market. The discussion falls under four sections.

Section I is introductory. It briefly touches on Kaya's post-independence development philosophy, attitudes and aspirations that have led to the current pattern or categorisation of housing stock which the estate agents deal with in the property market.

On an abstract level, section II deals with the salient points of property market of which housing is a unique sector. The functions and structure of surveying profession to which estate agents belong is analysed here.

Section III is devoted to the Kenyan housing market as seen in dual categories of low and high incomes. The role of estate agent is critically looked here in the wider context of this dualism.

Finally in Section IV, the discussion of this paper is evaluated and few questions and suggestions put forward in general discussion.

The theme that runs through this paper is that housing is not an ordinary commodity in the property market. It is a basic human need and as such a social service.

1.0

INTRODUCTION

In the last few decades, there has been renewed interest in the traditional professions in the Commonwealth countries. The main concern is to see whether such professions as Law, Surveying, Land Economy etc, have any relevances in the development of the so called developing countries in which the public sector is assuming greater role in use, planning and control of the land resources. Where these professions have been established, they have been asked to review their role in society so that they can attune themselves to the evolving circumstances.

The main challenge in these countries is development. Faced with such challenges, professional bodies have been organising seminars and conferences with such themes as:

"The role of Surveying and Land Economy in National Development in Africa"¹

"The Role of Professions in National Development"²

"The Law and Rural Development in Eastern Africa"³

This seminar has also included a similar theme for discussion, i.e. "The Role of Estate Agents in Housing Market", in a broader spectrum of the "Role of Private sector in Housing Development". The key word in this seminar and the previous ones is Development.

1.1.

CONCEPT OF DEVELOPMENT

In a country like Kenya, where the problems of inequitable access to adequate housing, health care, education, land resources etc. were inherited from colonial era, the term "development" has been a common "password" for all forward looking citizens. But in most cases the term has been assigned various meanings. This was the view of the participants of one

of the seminars mentioned above, i.e. "The Law and Rural Development in Eastern Africa" when it was held in Kisumu in July 1977. In this seminar the concept of "Development" was scrutinised by scientists, politicians, lawyers, economists, sociologists etc.

In that seminar, development was seen as a continuous process which rejects the old forms of social and economic organizations and productive processes by accommodating in new and more progressive ones. In total development should be seen to increase access to land resources, housing, health care to the majority of the Kenya citizens.

1.2.

KENYA'S DEVELOPMENT PHILOSOPHY

It should be noted that K.A.N.U. MANIFESTO 1963, The Sessional Paper No.10 of 1965⁴ and periodic Development Plans define development as a process that is aimed at achieving an equitably distributed high income per capita and also to guarantee every citizen freedom from "want, disease and exploitation".

The same philosophy also accepted the "best of foreign technology, culture and law" in forging "a new African Socialism". It is under this open "door-philosophy" that Kenyan's witnessed the influx into the country of all sorts of people of different educational, economic and cultural background who claimed to offer their services in the name of national development. Of note too, was the emergence of institutions, corporations, companies and organisations of both local and international magnitude. All were growing up in the name of nation building. Most of the foreigners who manned these institutions, whether in the government or private sector were later referred to as expatriates.

The coming of expatriates and the organisations, agencies etc, subjected our economic system and particularly urban areas to foreign influence in terms of high standards of housing, and its inherent infrastructure, high consumption lifestyles etc. At the same time, the indigenous elite had also vested interest in the post-colonial "modern" institutions that are firmly based on western lines. So whereas development philosophy spelt out the distributive strategies, the elite and particularly the traditional professions were ambivalent about the whole concept.

This ambivalence is most manifest in the bi-classification or dual vision of the economy into the arbitrary divisions of modern/traditional sector, high/low income housing, formal/informal sector. In this modus operandi, of the development philosophy, the formal or modern sector has been given undue treatment to the detriment of the informal or traditional sectors.⁵ In fact the informal sector has been subjected to embarrassing or hostile treatment. For example, low cost housing is sometimes, referred to as "eye-sore" in the "city in sun" or as unnecessary burden to the urban community.

In this ambivalent treatment development seem to mean to the Kenyans, and particularly professionals in construction industry, replacement of traditional or informal sector with modern sector. It also seems to mean total national wealth as manifested by change in modern infrastructure, urban skyline or consumption of the western luxurious goods such as cars, carpeted offices, etc. by the native elite, without a balanced quality of life for all members of the society in this country.

The bi-classification of the economy as formal and informal sectors, or low and high cost housing, etc. apart from

introducing biases and confusion, it has brought scapegoating, and lack of accountability to the entire society as to who is responsible for certain activities in the economy.

1.3

KENYANISATION: SOURCE OF INSATIABLE ASPIRATION

To the indigenous population, the expatriates seemed to represent high standard of excellence that Kenyans had to emulate or a yardstick to measure Kenyan's ability to perform in the formal sector that was dominated by the colonial rulers. Kenyanisation therefore meant the replacement of expatriates by the Kenyans who supposedly attained the coveted "mythical standards" skills etc. of these foreigners. No wonder, there is this impression that any Kenyan who replaces an expatriate is by all means a hero. This was also manifest in self-glorification such as, "I was the first Kenyan Estate Agent! I was the first African businessman in Moi Avenue etc."

The self-glorifying people felt that the society must reward them for their feat in terms of high esteem and posh housing, salaries, ... name it ... fulfilment of insatiable aspirations.

1.4

HIGH COST HOUSING: THE COMMERCIAL BIT?

In order for the private sector to attract the best skilled manpower from within Kenya or from abroad, high class housing constitutes one of the terms of service. So it is common today to find in the advertisements such clauses as;

"Terms of service include free furnished accommodation, a company car, medical and dental care".

"The terms of service include subsidized housing or generous house allowance."

Because of this commitment many employers are known to

spend more money on housing aspect of the terms of service, than on the basic salaries of their employees in the high income bracket.

On the other hand, where skilled manpower is plenty, and particularly in the low income workers the employers spend more on salaries than on housing. The employees on this group are given "meagre" house allowance and told to look for their own accommodation.

1.5

DIFFERENTIATED HOUSING MARKET

The housing market in which the estate agents operate is divided into the high and low income sectors. In the high income sector buyers are the government institutions and private local or multinational companies, agencies, etc. who have the purchasing power, are informed on the beauracritic procedures of housing market, and have "access" to legal institutions in case of disputes in housing transactions.

On the other hand, we have the low income housing where the buyers have less purchasing power, and ignorant of beauracritic procedures and have inadequate access⁶ to legal or administrative institution in case they need redress in housing transactions.

2.0

PROPERTY MARKET AND SURVEYING PROFESSION

Market in economics means a collection of buyers and sellers who are organised, formally or informally, for the purposes of transacting in certain commodities. In abstract situation, we can have "perfect" market where every buyer and seller has full knowledge about the commodities to be transacted so that they have latitude of choice. The buyers and sellers are also assumed to be of equal bargaining power so that they are

free to transact without compulsion or undue influence on the terms agreed. Where these conditions are lacking the market is said to be "imperfect" and the only way to improve the situation is by improving the communication between the sellers and buyers.

Property under which housing falls, is heterogenous and each property is unique in terms of physical and abstract characteristics, exposure to social and economic factors that confer value to property etc. Property is also fixed in spartial terms and cannot be assembled in a central market for transaction purposes. Property market is therefore imperfect. To make property market perfect, it is essential to spread the knowledge of the commodity to buyers. The best person to do this is the estate agent who in his position as a broker, can advise buyers and sellers on the problems that may arise when acquiring, disposing, investing or dealing with other property transactions.⁷ In this case the estate agent is an intermediary who should formally bring buyers and sellers together.

In property market, sellers usually quote prices above the market value and buyers bid for prices below the same. For the estate agent to be able to advise competently on the "reasonableness of such offers", it may be necessary that he has the skills of a valuer. As a valuer he should be able to interpret the market in the light of the social, economic and political factors that may likely affect the value of the property.

In Kenya, the estate agent arrives at his judgement after analysing the market that allegedly operates under "willing-buyer willing-seller". What should be noted is that willing buyer willing seller maxim holds best where the property is perfect and where the economy does not have accute disparities

in incomes, education, job opportunities etc. This is because where these disparities are prevalent, it means that the market is more imperfect because buyers and sellers do not have the same bargaining power, nor are they well informed on the operations of the property market. Since services of what in formal sector is referred to as "reputable" estate agents is very expensive, low income earners cannot have enough information on the property market. Because of their ignorance, they normally fall foul to unscrupulous people who pretend to have the information and go to extents of selling or renting houses that do not exist.

Where actions of such fraudulent people is rampant, the public looks to the government or to the profession under which the estate agents operate for protection.⁸

As far as the government is concerned, there are two alternatives, of either having an administrative machinery such as the rent tribunals where the aggrieved party can bring civil suit for settlement, or it can have fraudulent cases brought by police to court for prosecutions. The problem here is that of ignorance and costs. Some people in low income bracket may not know whether they have legal rights against their landlords or tenants. Those who may know their rights, may find that the costs of hiring lawyers and the beauracracy involved in these cases to be too prohibitive in terms of time, expenses etc.

The public may also call on the profession under which the estate agents operate. In Kenya, the public and parliament has called on the institution of surveyors Kenya, whose responsibility it is to determine the standards, codes of practice, fees etc. to be vigilant on the behaviour of their members. The problem here is complex and intricate. The rest

of this section tries to show that under the prevailing circumstances in Kenya, anybody can be an estate agent, he can charge what he wants, and as such, estate agency is a "wayward" branch of surveying profession.

The term survey (latin ~~super~~, over and video, I see) originally meant to watch over or keep an eye on. Hence the surveyor was an over looker, or a watchman.

In United Kingdom the surveying profession began to evolve when large estate owners sought the services of people skilled in surveying or land administration, i.e. experts who understood the use to which the land could be put to, techniques of mineral extraction, building construction, agriculture, forestry and so on. They were also expected to assess and advise on the implications of any particular land use on the estates.

In Kenya, the members of surveying profession are committed to the promotion of

"the science of measuring and delineating the physical features of the earth and the surveying for registration of titles to land, the art of determining the value of all descriptions of the landed property and of various interests therein, the practice of managing and developing artificer's work and the valuation, management, development and survey of mineral property"⁹.

From the above it is clear that the diversity of specialisation that is covered by the surveying profession is very large indeed. It ranges from those who insist on "science" or precision e.g. the land surveyors, to those who insist on "art" of managing The former category insist on objective judgement. The latter has a lot of value judgement although they may claim objectivity in their dealings. What should be

noted is that in this continuum of the "art of determining the valuation of all descriptions of landed property and of various interests therein and of managing" There are many activities which can be done by a valuer, estate manager or estate agent, for example auctioning, letting. In Britain, this category has always been referred to as Chartered Surveyor (General Practice). By implication it meant "jack of all trades and master of none". Today, the commonwealth surveyors call it, Land Economy, but this nomenclature does not make things simpler; since the professionals who fall under this category cannot rationalise the structure of their profession or clarify comprehensively its functions to the public. Sometimes they are valuers, when the credit squeeze is clamped on, they are auctioneers or estate agents. Because of this inability to rationalise its structure, the government has found it very difficult to protect the activities of these professionals as it does to Quantity Surveyors or Land Surveyors.

The lack of definite identity has made the profession vulnerable to intrusion by "quacks" and abuse by desperate estate agents who engage in disreputable deals when they find that the dictates of the market cut down their earnings.

Estate Agency as a branch of this section of the profession apart from bringing sellers and buyers together in the property market, they can also advise on sale, purchase, letting, auctioning, tendering etc. of landed property. Note these functions can be handled by valuers and estate managers. Hence in Kenya, you find boards and letter heads reading, "Valuers, Managing and Estate Agents, Auctioneers, Property Consultants, Property Developers".

What can be said here is that in this spectrum of the land economy profession, the discernible branches such as

valuation, forms the brighter part, while the estate agent forms the darker part of the spectrum. Estate Agents try to brighten this part by adding "Valuers" even if there is no valuer in such firms. Estate agency also has more commercial connotations than any other branch in surveying profession. Hence, colourful titles such as "Best" "Honest Homes" "Executive Home Finders," etc. One needs to look at property columns in the daily press to see more of them.

It happens too that estate agency is an occupation where most members of public either from outside or inside the country come into contact with the surveying profession. Because of the confusion which exists in the public mind as to who is a qualified estate agent and a "quack" the Institution of Surveyors of Kenya as the custodian of the surveying profession has initiated the proposed Estate Agents Bill and Valuers Bill, which are in preparation in the Attorney Generals Chamber for presentation to Cabinet and Parliament for debate and enactment.

To qualify as an estate agent or valuer, one will first be a member of the institution of surveyors of Kenya, be a holder of a University degree or Diploma which is recognised by the Registration Board as furnishing sufficient evidence of adequate training for practice as an estate agent or valuer.

Once these Bills become law, Institution of Surveyors of Kenya will be able to have control of the whole estate agency. It should be noted that where members of I.S.K. who are estate agents have carried themselves disreputably, disciplinary action has always been taken.

3.0 HOUSING MARKET AND ESTATE AGENTS

In Kenya, there is no adequate legal or economic definition of the term house. Willy Mutunga argues that even though the Rent Restriction Act Cap 296, Landlord and Tenant Act Cap 301 and the Public Health Act define "dwelling-house" "premises" these definitions are inadequate and leave a lot of room for interpretation. He adds that a search into English Common Law does not provide the definition of a house either. For this reason, tenants in "Carton igloos", "Carton Kiosks" and "Caves" may want to make use of the rent tribunals for redress.¹⁰

In the same vein, housing market should be seen as embracing all categories of shelters from "igloos" to posh "executive" residence. In the same continuum the services of estate agents runs through.

The assumption in this paper is that since there is a detailed paper on housing market in this seminar, this section should only restrict itself into the basics of housing market as they relate to estate agency.

Housing is not an ordinary commodity in the property market, such as block of offices, industrial or commercial premises. Like water, food, health care housing is a basic human need. In other words it is a social service.

This theme is constantly emphasised in every Kenya's Development Plan e.g.

"Decent housing within the reach of each income class is recognised by the government as a major contribution to family and community health and to the morale of the working population."¹¹

Provision of housing in this country too is an activity whose responsibility cuts across government ministries, local

authorities, parastotal bodies, private institutions and individuals. For example the government is concerned with the planning, surveying, leasing or compulsory acquisition of land for housing purposes. The ministry of labour deals with housing when determining house allowance in wage agreement and ministry of Urban Development and Housing is concerned with housing by virtue of its social service and community development

From the above, it is clear that provision of housing as a social service is not left to the dictates or volition of private property market.

Housing market can also be seen in the context of the concept of value. The concept of value distinguishes between exchange value and use value. Exchange value of any commodity in the market is influenced by that commodity's intrinsic factors e.g. the qualities of diamond. On the other hand, use value is influenced by extrinsic factors such as the human need for air, water or, housing. Because of these factors exchange value tends to involve a lot of objectivity and less of value judgement. Use-value, though calling for objectivity, inevitably involves a lot of value judgement.

The supply and demand of housing stock in a country may be determined by factors such as human need and not the ordinary market forces. Hence the stock of housing in some urban areas today in Kenya is determined by use-value and not exchange value. In a community with high and low incomes, housing may be seen as a status symbol by those in high income bracket and as a need by those in the low income category. Those two factors may involve exchange-value and use-value, and mean quite a lot in the housing market.

People in the high income groups have high purchasing power and can have a wide latitude in choice of the type, quality,

location and nature of tenure with much ease. This group also has effective demand on the type of the housing that is available in the market. The housing market in this sector will therefore involve exchange value, although, sentimental values may come in. For example, it is usual to find an ordinary residential accommodation being outbidded in the market where the highest bidder pays over 20,000/= p.m. He pays this not because the house is built of gold or other precious stones, but it happens that sentimentally, this house befits the so called executive lavish living. Note, tenants are even prepared to pay yearly rental advance for such houses.

On the other end, we have low income earners. They have no latitude of choice as to the type, quality, terms of tenure or location of the premises. The housing situation is given. It is dictated by the strength of their incomes in resisting the rising rents and particularly in an inflationary economy. In this category of housing, the "invisible hand" of the market forces cannot be relied on in supplying houses for this low income earners. The government intervention is therefore necessary.

We should not forget that although the housing market falls into this dual category, it is difficult to draw a line between the high income and low income groups. In between the two, there is an obscure group, sometimes referred to as a lower middle or upper middle class. This is the most embarrassed group today in housing market. Socially it is not willing to be classified under lower income group. Financially it cannot afford to live with the high income group. The economy has not carved a recognisable sector for them. For this reason, the group is subjected to the counterveiling forces, that pull on one hand towards the high class and on the other towards the low income.

The above analysis gives the continuum of the type of the housing market and the clients that estate agents encounter in the property market.

In the high income housing, the estate agents who operate here are what in terms of business terminology have come to be called "sophisticated" "established" or "reputable". But one wonders whether this business view is correct. Our view is a properly trained agent can handle any housing market. The "reputable" "established" or "sophisticated" depends on the shark that has managed to follow the big ship in deep waters. It is the big ship that makes a greater kill.

What has happened in Kenyan housing market is, after independence, there were estate agents who were in business and have continued to have public or private institutions, companies, banks, financiers etc. These are clients with large properties with high values. Since fee scales are based on ad valorem, the more valuable the property the better the deal. A single transaction is quite bagful. It is a big kill.

Again, since most of the clients in this high income sector are informed, on their rights, or can afford the services of lawyers in case of disputes, estate agents are very cautious and care very much for their clients' interest. Because of this awareness, and adequate "access" public control is considered by authority as unnecessary bother.

In the lower income housing, the sellers have low purchasing power. Business is risky and involves a lot of management problems. Properties involved are of low values. A single deal is "pea nuts". Estate agents also know that their clients in this class may be ignorant of their rights. "Access" to rent tribunals or other courts in case of grievances is inadequate. The clients are ignorant or fear beauracratc procedures.

Estate agents therefore tend to relax and in most cases unscrupulous in their approaches.

Because of these uncertainties on the working of housing market and the relaxed attitudes of estate agents, public control is considered to be imperative to protect the weak tenant/landlord relations. Measures such as Rent **Restriction** are therefore found in this category.

3.1.0 HOUSING MARKET: OWNER-OCCUPIER V. RENTED ACCOMMODATION

In a theoretical framework, Lean and Goodal discusses housing market in a rented-owner occuper accommodation relations.¹²

In Kenya, a similar relationship exists. Before the Varsey Report¹³ three decades ago, rented accommodation was a main activity in housing market, but since that time, owner-occupied accommodation through the process of tenant-purchase, site and service schemes etc. has gained prominence.

The same relations of rented versus owner occupier accommodation is also a recognised fact by employers, who in the terms of service for their employees include options for house allowance, housing by employer or owner occupied house allowance.

3.1.1 HOUSING MARKET: RENTED ACCOMMODATION

We have just noted that most institutions, companies, and agencies, include housing in the term of service for their employees as a necessary facility, and particularly those in high income bracket. The estate agents here have been very good intermediaries for the buyers and sellers where these employers are involved in renting or acquiring accommodation for their employees. This contact is in most cases through the local dailies, e.g.

¹²Bank Manager requires seven houses in Buru Buru,

Harambee, Ngei, South C, Golf Course. Ring No....."

"Airline executives, embassy officials, company directors require executive residence, any area, Ring"

"A Japanese Corporation requires houses for their local staff especially in Buru Buru, South C, Golf Course, yearly advance Ring No....."

Since transactions are not statutorily controlled in this category, rents are astronomically high. Some have boggled the minds of economists and social scientists, for they are **out** of tune with average salaries of most of Kenyans, e.g. houses let up to 18,000/= or 20,000/= per month.

In the low income housing the estate agents role has not been a happy one. Most premises are statutorily controlled. When rents have been rising in the higher income housing sector, the financial ceiling that was fixed at 800/= in 1965 has been dragged along by economic dictates and particularly inflation. No wonder estate agents have been known to intimidate tenants on behalf of their clients so that they can accept higher rents or be forced to vacate the premises unceremoniously.

Since the Rent Tribunal has been a weak institution in housing market, the tenants in this sector have been ruthlessly harrassed, exploited and dehumanised. Estate agents cannot escape blame in this scenario.

3.1.2 HOUSING MARKET: OWNER-OCCUPIER/TENANT PURCHASE

According to the national housing policy the private sector has been expected to provide high cost housing and government to be mainly responsible for the low cost housing.

PROVISION OF HIGH-COST HOUSING AND ESTATE AGENTS

In the provision of the high cost housing the estate agents

can help to bring financiers, developers and buyers together, sometimes they can also give advises as to the necessary preliminary information such as building costs, planning requirements or legal matters that hinge on housing construction.

We shall discuss two aspects of new housing here. That is, the supply of land and advertisement for new housing schemes that come under private developers.

SUPPLY OF HOUSING LAND

Abrahms' Report acknowledged almost two decades ago that there "is generally no shortage of land for urban development and housing" in Kenya.^{14(a)} It should be noted that even though this statement might not be true today in terms of land ownership, it could be true in terms of "spartial supply".

What should be realised is that the government is the main supplier of land for housing purposes in most urban areas. He alienates this land at almost a "peppercorn" ground rent. So once the Commissioner of Lands advertises for housing plots in the press or official Gazette, the following day - thousands of people queue at his cashier's office, ready to meet all conditions for alienation purposes. Although there are strict conditions that these plots should not be transferred without permanent development on it, it is not unusual to find the same advertised by estate agents in the press and with no developments on them. Although estate agents may argue it is not their business to know what is agreed between the Commissioner of Lands and the allottee, it is difficult to be convinced by the estate agents why they advertise at prices which are at times four or ten times the original value.

The whole process involves speculation, that leads to the

cost of land to be a major item in building costs even before the ground is broken for construction purposes. Land has therefore stopped to be what the Commissioner of Lands once told a Surveyor's conference.

"To common man "land" means the ground, the soil or the earth which is said to be the solid portion of the earth's surface that provides space for buildings, growing crops, grazing animals, building roads or space in which various human activities can be carried. It is in this context that land ownership is taken as a source of considerable social status, sentimental value, prestige and economic power to the majority because land provides shelter food, and wealth which are basic needs of the population." ^{14(b)}

This is the Commissioner of Lands' view of land.

Is he aware that the estate agents have a different view?

ESTATE AGENT-CUM-DEVELOPER

Where estate agents are combined with property development, his role as an estate agent is changed. He is playing the role of a seller as well as a broker. He sees the buyer in a different vision and the whole concept of "brokerage" or "Agency" is reduced to mere paper work .

In the last few years, such estate agents have been known to have premature advertisement of upcoming housing estates. Even before the housing estate is approved by the local authorities and grounds broken, the estate agents ask for deposits, or purchasing money. What we don't know is whether this is solely the work of estate agents, or we should venture to assume that other professionals such as lawyers, architects,

or financing agencies have a part to play in the whole scenario. Buyers have been dragged into some sort of contract after advertisements in the press, after which they are subjected to all sorts of financial inconveniences, which even the authorities do not sympathise. In other words all additional costs to premature housing estates are passed to the consumers. It seems the consumers have no protectors.

LOW COST HOUSING: TENANT PURCHASE, SITE AND SERVICE SCHEMES

This is a category of housing that is meant to house the poor. It is highly subsidized. The down payments, monthly instalments and running costs are quite reasonable. The government assistance in terms of loans or land subsidy is very favourable indeed.

The government objective is to make the low income earners become owner occupiers. But this objective has been defeated. Have the estate agents contributed anything to this failure? Could it be that the estate agents contributed to the current entrepreneurship which the tenant-purchase schemes seem to have kindled in housing market?

Lets have a look at a situation in which a very subsidized tenant-purchase scheme is built up for low income workers. The cost of the subsidized unit is say 60,000/= in January 1980 when the purchasers are issued with keys. In July 1980 an advertisement appears in the paper under a "reputable" estate agent's letter heading for sale of some of these houses at 100,000/= with this rider "Mortgage arrangement will be made for the purchaser". The same could be said of rents of the same. If the loan repayment by the tenant-purchaser is 300/= p.m. the estate agent advertises that the neighbouring similar house is being let at 1,100/=.

The tenant-purchasers who read these advertisement uncritically, and without the knowledge that these advertisements are "invitation to treat", reacts by going to the same estate agents to have their premises either let or sold at what will be called market rent or market value respectively.

The result is that these tenant purchasers lease or sell their properties and go to queue in the next upcoming tenant purchase schemes. A single advertisement may therefore lead to the collapse of a scheme which was genuinely meant to help those who are really in need. Umoja Estate is an example.

In this case Estate Agents have tended to encourage either absentee tenant purchasers or speculation over any housing estate that have an element of government subsidy. In other words, whereas in the official circles housing is considered a social service, estate agents have all through treated it as a pecunia investment. This is in a way contradiction of government policy especially in tenant-purchase or site and service schemes.

4.0

EVALUATION AND CONCLUSION

The analysis given above brings to our attention few crucial points. It points to the need to have a close review and assessment of some of our economic and social policies, the role of the traditional professional institutions in our society, and the effectiveness of some of our administrative institutions such as the Rent Tribunal.

4.1

We have found that our economy has informally and arbitrarily divided into formal and informal sector. This dualism has its own contradiction, which is quite visible in housing programmes where dilemmas and knots require extra human and financial resources to solve or entangle.

In 1975, the World Bank Mission to Kenya¹⁵ argued that

since the economic activities in Kenya cover a wide continuum of enterprises, "in the natural order of things there is no technological" or other means to demarcate formal sector activity from informal sector activity. Differences are only in degree of ability, technology, income and wealth. As such the dichotomy between formal and informal activity emerges only when artificial barrier is put up in the continuum.

The mission concluded that by favouring the formal sector which was originally based on foreign concepts of standards and development goals, is a real barrier to Kenya's development philosophy.

Where the formal sector has been given undue favour to the detriment of the informal sector, reality points to the fact that we need some cool rethinking. Take the case of "matatus" transporters. It is a small vehicle. Flexible in operation and quicker than the "mighty bus" which is inflexible bulky and slower than the "matatu". It was the "mighty bus" that was given a favourable treatment than the matatu, by our economic planners. It is the matatu today that have thrown the might bus out of the road and has a possibility of even being funded by the World Bank.¹⁶

What we need to reflect on is this. On the global scale, the energy crisis has led some countries to think "small is beautiful" and this concept is applied to motor manufacture, urban planning, house design etc.

In Kenya, we are now talking of stimulating private sector into providing high cost housing (probably some that are renting over 20,000/= p.m.). What we should realise is that this type of housing fits best in the city suburbs, since they are great land consumers. They also involve high

commuter costs. Are we aware that energy crisis is with us?

4.2 Another point should not escape our attention is the fact that even though our parliament may pass the Estate Agents' & Valuers Bills into law, two issues that hinge on professionalism need to be discussed. The first one concerns monopoly of skills by a few people and the second concerns the obligations which these professions owe to the society that protects their skills by legislature in Kenya.

The author has dealt with this subject in greater details elsewhere¹⁷ So we shall only concern ourselves with the basic fundamentals as they revolve on estate agents and housing market.

Scholars on professionalism, agree with the Webster Dictionary's definition of professionalism as an organisation which through force or concerted opinion maintains high standard of achievement, conduct and commitment to a "kind of public service". They also agree that professional work should be tied to the social and economic context of their countries, and in this respect it should reflect the social values of these countries.¹⁸

We also related earlier in this paper that most governments in developing countries have requested the traditional professional bodies to attune themselves to evolving circumstances in which they practice their skills. In Kenya, we find that some of their operations are even detrimental to government policies.

In Australia, these traditional professions have been criticised for their "narrow social composition ideological conservatism, rigidity in thought and action and their social elitism"¹⁹ This critic attributed this attitude to the origins and evolution of the professions in general.

First, the philosophy behind the origins of most professions was client oriented and protection of "closed shop" interests or

the "guilds" rather than public oriented.

Secondly, these professions especially those in construction industry are market oriented and like speculators, thrive best where private land ownership is guaranteed and has less public control.

Thirdly, the training of these professions has been mainly in English traditions which overstress private property and sanctity of contract, which view land as a pure merchandise rather than a community facility or amenity.

The trend today is that in most countries, Kenya included, the government is the "provider of jobs, land, food, insurance, health care and other necessities".²⁰ The implication of this trend is that there is need to have "new perceptions and theories" as far as the professions' role in land utilisation and housing is concerned.

It is in the above perceptions and trends that professions should attune themselves in developing countries. In a situation where for example the government has granted the professionals power of registration so that they can regulate their affairs, what the society expects and demands from such professions is that they should not be "guilds in modern dress". They should design, build and manage all housing stock without prejudicing public interest.

In Britain, monopolies commission and the Restrictive Trade Practices Act is a clear pointer that in a society where "technology has become a dominant feature of social culture" professionals are not going to be viewed any longer as "men of eminence, and dignity"²¹ or esteem, as the earlier generations had done.

In U.S.A. the credibility of the estate agents and valuers' skills were put to test, when the 1930's economic

depressions, "rent assunder the fabric of the mortgage market and led to wholesale foreclosures."²² Apart from raising doubts on the valuations and estate agents' advice on which the mortgages were based, the Americans also questioned the training of these professionals involved in housing market.

What Kenya society expects from the surveying profession of which estate agents are members is to show diligence, probity soundness of judgement, and technical skills, and above all stick to their professional ethics when they are dealing with housing market. A renown American real estate expert once wrote,

"These codes protect the professional, lest too much be expected of him, as well as the public, lest two little will be delivered."²³

4.3

"ACCESS"

"Access" or opportunity to bring disputes, grievances or claims for arbitration to an authoritative institution, by low income workers or tenants in low cost housing is inadequate.

What we have noted in our discussion is that in low cost housing market, most of the grievances that arise from the tenant/landlord relationship, in which the estate agent is an intermediary, are brought to the rent tribunal as civil suits or to criminal courts as frauds.

These courts and tribunals require intermediaries such as the lawyer, valuer etc, who knows the procedures of the system. People in low income groups cannot afford this. In addition, because of cultural, language, fear or ignorance, the tenants may not know whether they have any rights against landlords or estate agents. This inadequacy of "access" leaves a lot of room for the unscrupulous estate agents to exploit this category of people in the housing market.

RECOMMENDATIONS FOR DISCUSSION

1. If it is of necessity that the provision of housing in Kenya has to be seen in dual categories of low and high incomes then the middle income should be given a fitting treatment.
2. Legislation of Estate Agents and Valuers Bills should be expedited.
3. Any advertisement of housing estates which in the opinion of the government is premature, detrimental to government policy, exploitative or speculative should be sanctioned.
4. Structure of professional fees also needs to be reviewed and related to the rest of the economic sectors.
5. Rent Restriction Act should be reviewed and restructured with a view to:
 - (a) taking account of economic and social realities.
 - (b) relating the "rent ceiling" to economic realities.
The ceiling should be extended to cover premises of up to 4,000/= per month.
 - (c) making the work of Rent Tribunals more effective.
That is, it should be expanded to accommodate valuation, prosecution, and inspectorate departments, so as to be able to discharge its duties.
 - (d) decentralising and creating more efficient hierarchy of authority as suggested tentatively by Willy Mutunga.²⁴, That is, starting with

Rent Magistrate	→	Senior
Rent Magistrate	→	Rent court →
		Court of Appeal.
6. Monopolisation of large public institutions, banks etc. by few valuation, Managing and Estate Agency firms should stop in the interest of equity and unity of surveying profession and efficiency in housing market.

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