PROCEDURE TO ALLOCATE LAND FOR URBAN USE AND TO OBTAIN A BUILDING PERMIT

1. INTRODUCTION

The objective of the urban land delivery procedure is to provide urban plots under a planned town (urban area) with common standards with regard to size, adequate infrastructure, and other basic social services. The aim is the development of the targeted area(s). The process includes the formal acquisition of a selected area, planning and surveying, compensation of the residents and issuance of the Certificate of Title in compliance with the Town and Country Planning Ordinance (cap 378) 1956, Land Acquisition Act 47 1967, and Land Act No. 4 of 1999. Thereafter, the landowner is requires to obtain a building permit and begin construction. Since the process is for the development of a human settlement, it involves National, Municipal, local, and individual household participation to render proper acquisition and compensation of the area concerned.

Obtaining a building permit is a condition for keeping a right of occupancy. According to section 34 of Land Act Nº 4 1999, it shall be a condition in every grant of a right of occupancy, where the purpose for which the grant has been made is to construct buildings on the land, and that the grantee of such right shall apply for a building permit under the Township (Building) Rules within six months of the grant of the right of occupancy.

2. LAWS AND REGULATIONS APPLICABLE

- Land Act No. 4 of 1999
- Land Registration Ordinance (cap 344) of 1954
- Land Acquisition Act of 1967
- Town and Country planning Ordinance (cap 378) of 1956, revised in 1961
- Land Surveying Ordinance (cap 390) of 1957
- Local Government (Urban Authority) Act 1982
- Public Health (Sewerage and Drainage) Ordinance (cap 336) of 1950
- The Land (Conditions Of Rights Of Occupancy) Regulations 2001 Section 6
- The township (building) Rules (cap 101)

3. ENTITIES / INSTITUTIONS INVOLVED

- Town Planning Section at the Municipality, under the Planning and Coordination Office headed by the Municipal Town Planning Officer
- The Land Delivery Office at the Land Development Services Division at the Ministry of Lands

- Human Settlement Department at the Ministry of Lands
- Minister of Land
- Government gazette
- Property Valuation Agency at the Ministry of Lands
- Ward Executive Officer of the locality
- District and Regional Commissioner
- Land Development Department at Municipality (Authorized Land Officer)
- Treasury
- Municipal cashier
- Area Planning Committee for Infrastructure and Human Settlement at the Municipality
- Planning and Coordination Office
- Human Settlements Development Division
- Surveys and Mapping Unit of the Urban Planning Section under The Planning and Coordination Department
- Surveys and Mapping Division at the Ministry of Lands
- Land Commissioner
- Registrar of titles in the Land Ministry
- Municipal Town Planning Committee (deals with the application for the building permit and the approval or denial of the application)
- Authorized Land Officer in the Land Development Section
- The municipal architect in the Planning and Coordination Department (approve the building plan)
- Consultant/licensed architect (who prepares the building plan)
- The applicant
- The Municipal Planning and Coordination Department (deals with the evaluation of the entire plan)
- The Municipal Health Department (deals with waste management and drainage system)

4. DESCRIPTION OF THE PROCEDURE

STAGE 1: Identification of a Suitable Area

Time: 1 year or less, depending on the demand and on the availability of land.
The Town Planning Section at the Municipality identifies a suitable area for development. Additionally, the process involves the participation of other local authorities (such as Ward Executive Officers and Ten-Cell Leaders), including grassroots leaders and individuals.
Purpose: Knowing the boundaries of the identified area and the existing conditions.

STEP 1

The Town Planning Section —in collaboration with the Human Settlement Department at the Ministry of Lands— is in charge of identifying suitable areas. This involves acquiring a base map of the area, and surveying the land to determine whether it is suitable for development and if so to determine what type of development [1] (e.g. housing, industrial, commercial, institutional, etc.). In addition, it involves determining how many people would be affected by the development.

STEP 2

The Town Planning Section, after the identification process, must notify the Human Settlement Department.

STAGE 2: Declaration of the Area to be Planned and Notification of the Property Owners

Time: 1 year to 1 and a half-year

The Minister of Lands, by order published in the public gazette, declares the area to be a Planning Area.

People are notified of their area to be under planning scheme and that the government is in the process of acquiring it for public purposes. The government may use officials such as the Ward Executive Officer, the District Commissioner, and the Regional Commissioner to mobilize the occupiers.

According to S. 7 of The Land Acquisition Act of 1967, occupiers of the selected land may be given a period before yielding possession (e.g.: to harvest their crops).[2] Nevertheless, people cannot be told to vacate land without first obtaining due compensation. The rights of landowners are only extinguished after due compensation.

STEP 3

The Land Delivery Office of the Land Development Services Division at the Ministry of Lands must prepare the notice declaring the area to be a Planning Area. The notice, which prevents occupiers from conveying any part of the selected area, states the government's intention of acquiring the land for public purposes (in accordance with S. 7 and 8 of the Land Acquisition Act 1967).

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1 If there is any need to enter the premises for identification purposes, the Human Settlement Department at the Municipality is in charge of notifying the occupants, at least 3 days in advance. As we were informed at the Ilala Municipality, ordinarily no notice is served although the law (Land Acquisition Act No. 47 of 1967) requires them to do so. The local authorities leaders, such as the ward executive officers, ten-cell leaders (Balozi/Mjumbe), notify the land occupiers.

2 The President may acquire any land when it has been selected and required for public purposes. Land for public purpose is defined as that to be used for any government scheme, such as for the development of housing. (e.g. Kipawa area, near Dar es Salaam International Airport, by notice published in the official gazette, according to S. 7 of the Land Acquisition Act of 1967)

STEP 4

The Minister of Lands, on behalf of the President, must sign the notice to be published in the official gazette and the notification to each occupier of the selected land.

An officer from the Ministry of Lands, with the assistance of the Ward Executive Officer and/or Ten-Cell Leader of the locality, must notify each occupier. However, this step is often limited to the publication of the notice. Consequently, occupiers more often than not are not aware of the notice of the government's decision to develop the area.

STEP 5

The Land Delivery Office must send the same notice for publication to the government gazette.

STAGE 3: Valuation of Existing Interests

Time: 1 year

The Property Valuation Agency at the Ministry of Lands, by way of Ward Executive Officers at the concerned Municipality, goes to the area and evaluates each property. They mark and count each tree, the types of crops, and the number of buildings found in the area.

From this data, they prepare a compensation schedule for each landowner.

STEP 6

The Property Valuation Agency at the Ministry of Lands must send a team of government valuers to the land in question. Each property is valuated and the owners (occupiers) are listed.

STEP 7

The Property Valuation Agency prepares a compensation schedule for the property of each occupier.

Cost: TShs. 300,000 to TShs. 500,000 per acre at government rates

Transportation: TShs. 1,000 to TShs. 10,000

STEP 8

The Chief Valuer from the Property Valuation Agency approves the compensation schedule for each property owner.

STEP 9

The Compensation Schedule must be signed by the Ward Executive Officer of the locality, and the District and Regional Commissioner.

STAGE 4: Effecting Compensation Payment

Time: 1 to 2 years[3]

The occupiers shall be compensated according to the S.12 of the Land Acquisition Act of 1967 and Land Act No. 4 of 1999. Compensation will be effected as per the compensation schedule and occupiers may also be compensated for disturbance allowances.

Payments are made at the Municipality. If there are any delays (for instance, owner not located), payments may be made by the Cashier at the Property Valuation Agency.

STEP 10

The Director of the Land Development Department at the Municipality (Authorized Land Officer), through the Ministry of Land, requests the compensation amount from the Treasury.

STEP 11

The Treasury disbursement is authorized

STEP 12

The Director of the Land Development Department at the Municipality must announce in the municipal notice board that compensation is available.

STEP 13

The municipal cashier pays the compensation.

STEP 14

Once occupiers receive due compensation, they must vacate the land.

STAGE 5: Preparation and Approval of the Detailed Planning Scheme

Time: 6 months

The Town and Country Planning Ordinance of 1956 gives the minister responsible for town planning powers to declare areas to be planning areas, to appoint planning authorities, to make planning regulations, and to prepare and/or approve planning schemes.

No development is allowed in a planning area without planning consent from the Aerial Planning Committee at the Municipality.

Here we assume that the General Planning Scheme has been approved. Therefore, we move on to the next step: the Detailed Planning Scheme.

3 There is a special case in Kipawa —to date, it has already taken more than 7 years.

STEP 15
The Area Planning Committee for Infrastructure and Human Settlement at the Municipality makes the decision to prepare a Detailed Planning Scheme.

STEP 16
The Town Planning Section prepares the Detailed Planning Scheme.

STEP 17
The Detailed Planning Scheme is deposited for public inspection in the Town Planning Section, and is submitted to the Urban Planning Committee for Infrastructure and Human Settlement of the Municipality, for scrutiny.[4]

STEP 18
The Urban Planning Committee for Infrastructure and Human Settlement approves or rejects the Detailed Planning Scheme.
If it is disapproved, the Town Planning Section will be required to amend the plan.

STEP 19
The Municipal Town Planning Officer at the Planning and Coordination Office submits the detailed plan to the Human Settlements Development Division in the Ministry of Lands for approval.

STEP 20
The Director of the Human Settlements Development Division approves the submitted plan.

STEP 21
The approved plan is registered in the Human Settlements Development Division in the Ministry of Lands.

STEP 22
The Human Settlements Department in the Ministry of Lands sends a copy of the registered Plan to the Municipality.

STEP 23
The Human Settlement Department at the Municipality distributes copies of the Registered Plan to the utilities companies (TANESCO, City Water and TTCL), as well as to the Surveys and Mapping Unit of the Urban Planning Section under the Planning and Coordination Department so that it can proceed with the surveying process.

4 The deposit is for public inspection. Since there may be some objections, these are also posted for further public scrutiny.

STAGE 6: Surveying the Land

Time: 1 to 2 years
A subdivision scheme should result from survey works. The land should be surveyed in order to prepare a survey plan within the meaning of the Survey Ordinance (Cap 390).
Public or private surveyors could do the survey, but the assumption is for a public surveyor.

STEP 24
The Surveys and Mapping Unit at the Urban Planning Section under The Planning and Coordination Department at the Municipality carries out site inspections, reconnaissance, and job planning (field work).

STEP 25
The surveyor must carry out a control survey in order to establish relationships with past surveys (office work).

STEP 26
The surveyor demarcates and adjudicates in favor of the Plan Scheme (the latter only when the Plan overlaps an unplanned area).

STEP 27
The Surveys and Mapping Unit processes and compiles the data. A cadastral map is drawn (office work).

STEP 28
The Surveys and Mapping Unit submits the cadastral map and the survey reports to the Surveys and Mapping Division at the Ministry of Lands.

STEP 29
The director of the Surveys and Mapping Division at the Ministry of Land approves the surveyed plan and registers it.
If disapproved, it is sent back to the Surveys and Mapping Unit at the Municipality for correction.

STEP 30
The Surveys and Mapping Division keeps the approved surveyed plan and distributes copies to the Land Commissioner, the Human Settlement Development Division, and the Municipality.

STAGE 7: Issuing Letters of Offer

Time: 1 month (up to 6 months in a few special cases)
Letters of Offer are offered in the municipality after complying with certain requirements, including those mentioned below.

STEP 31
The Ministry of Lands, through the Land Delivery Office at the Land Development Services Division, advertises the availability of plots in the newspaper. Once the announcement has been made, people can begin submitting applications to the municipality.

STEP 32
Forms are available at the Land Development Department at the Municipality. Applicants must obtain and fill in the forms. Applications must be filled in and submitted at the Authorized Land Officer.

Cost: TShs. 2,000 fees for application forms

STEP 33
The Authorized Land Officer at the Municipality takes the applications to the Municipal Allocation Committee to approve the allocation of plots.

STEP 34
The Allocation Committee assesses[5] all applications. Names of successful applicants are kept on the municipal notice board so that they can proceed with the process of obtaining letters of offer.

STEP 35
The Authorized Land Officer in the Municipality prepares and signs the letters of offer.

STEP 36
Applicants go to the Municipality to choose the plots they applied for and receive instructions for payments from the Authorized Land Officer.

[5] According to the Land Act, the Committee shall consider: i) an applicant's ability to develop the land in accordance with development conditions; ii) whether the applicant has attained the age of majority save where the minor's application is accompanied by the guardian's evidence of intention and ability to develop the land; iii) whether the applicant has other land under a granted right of occupancy or customary right of occupancy; iv) basis of first in first out; v) principles of equity, reasonableness, fairness and gender balance; vi) the needs of disadvantaged groups.

STEP 37
Applicants fill in forms for payment, submit the receipts of payments to the Authorized Land Officer, and then collect the Letter of Offer. This Letter of Offer contains the conditions to develop the land.[6]

STAGE 8: Acceptance of Letters of Offer

Time: 1 month

STEP 38
Applicants fill in the Letters of Offer and submit four copies of recent passport photographs to the Authorized Land Officer at the Municipality.

STAGE 9: Issuing of and Registering a Certificate of Title

Time: 1 to many years

STEP 39
The Authorized Land Officer at the Municipality prepares the Certificate of Title (Land form No. 22).

STEP 40
Applicant signs the certificate before the advocate in the Municipality.

STEP 41
The Authorized Land Officer sends the signed Certificates of Title to the Commissioner for Lands at the Land Development Services Division at the Ministry for Lands to complete the contract by signing on behalf of the President.

STEP 42
The Land Commissioner sends the certificates to the Registrar of Titles in the Land Ministry for Registration.

STEP 43
The Registrar of Titles in the Land Registry accepts or rejects the certificate's registration.

STEP 44
The Registrar of Titles informs the Land Commissioner with a covering letter regarding the registration/or denied registration of the Certificates of Titles.

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6 Every right of occupancy shall be subject to any development or other conditions which may be prescribed or the Commissioner may impose and which are not inconsistent with the Land Act of 1999.

STEP 45
The Registrar of Titles sends the registered Certificates of Title back to the Municipality.

STEP 46
The applicants of Certificates of Titles are informed, by either a covering letter or a notice through the notice board, to come to the Municipality and identify themselves to the Authorized Land Officer in order to collect their certificates.

STEP 47
The Authorized Land Officer in the Municipality delivers the Certificates of Title to applicants as their rights of occupancy over the occupied plot are identified.

STAGE 10: Applicant Hires a Licensed Architect and Presents his/her Requirements to Have a Building Design/Plan to obtain a Building Permit

STEP 48
Applicant takes the licensed architect to visit his site/plot in order to establish the measures and development aspects for the plot.

Time: 1-2 days
Cost: Allowance TShs. 50,000 to TShs. 100,000. Transport TShs. 10,000 to TShs. 20,000 depending on the location of the plot.

STEP 49
The licensed architect designs a variety of drawings based on the site he has visited.

Time: 1-2 weeks
Cost: Nil

STEP 50
The licensed architect puts his/her official seal and signature on the drawings (the architect must be registered with the Architectural Board).

Time: 1 day
Cost: Nil

STEP 51
The applicant pays the architect for the drawings and takes them to the Municipal Planning and Coordination Department.

Time: 1 day
Cost: Fees to the licensed architect TShs. 200,000 to TShs. 1 million

STAGE 11: Presentation of Completed Forms and Required Documentation

STEP 52
The applicant must prepare four sets of drawings, attaching copies of the Letter of Offer or Certificate of Title to show ownership of the land he/she wants to build on.

Time: 1 day
Cost: Nil

STEP 53
Applicant submits the four sets of architectural drawings to the Municipal Architect who assesses them and payments of scrutiny fees which are set depending on the plan as well as location of plot.

Time: 1day
Cost: Nil

STEP 54
Applicant goes to the Municipal Accountant, pays the scrutiny fees, and submits the receipts to the architect to obtain the forms.

Time: Same day
Cost: Scrutiny fees TShs. 2,000 to TShs. 300,000

STEP 55
Applicant obtains application forms and completes and submits them at the Planning and Coordination Department.

Time: Same day
Cost: Nil

STAGE 12: Office Inspection of the Submitted Plans and Application

STEP 56
The Planning and Coordination Department where the application and submissions were filed completes the initial assessment.

Time: 1-2 weeks
Cost: Nil

STEP 57
Town Planning Section receives the file and the town planner checks the plans and the use group. If satisfied, the Municipal Town Planning Officer signs the application forms in the file and if not satisfied, he makes an observation calling for amendments.

Time: 1-2 weeks
Cost: Nil

STEP 58
Architectural section must check the standards required and whether the architect who prepared the plan was registered or not. It then approves the application if the standards are satisfactory.

Time: 1-3 weeks
Cost: Nil

STEP 59
The architects may be required to visit the site to confirm the existence of the site and its conformity with the plans.

Time: 1-2 days
Cost: Transport TShs. 10,000 to TShs. 20,000

STEP 60
Land Development Section: The Authorized Land Officer must assess the application to ensure that the applicant is the real owner by checking the authenticity of the Certificate of Title. And in case the formalization was incomplete, they will direct it to be completed.

Time: 1-2 weeks
Cost: Nil

STEP 61
Surveys and mapping section: The Municipal Surveyors must check the definite boundaries of the applicant’s plot and ensure that they are acceptable. They approve the application by signing and giving recommendations.

Time: 1-2 weeks
Cost: Nil

STEP 62
Health Department: Examines all the arrangements to ensure compliance with sanitation regulations (e.g. drainage and sewage system as well as management of wastes). The health/waste management officer makes recommends, if required, and signs the form.

Time: 1-2 weeks
Cost: Nil

STEP 63
Fire officer: must comment on the security system included in the plan with regard to fire safety. They too make recommendations and sign the form.

Time: 1-2 weeks
Cost: Nil

STEP 64
Planning and Coordination Department: the file is returned to this department for compilation in order to prepare for the meeting.

Time: 1-2 weeks
Cost: Nil

STAGE 13: Meeting for Scrutiny of Building Permit Applications are to be Held Once Every 3 Months (can be less in special cases)

STEP 65
The Municipal Architect in the Planning and Coordination Department prepares the summary of every plot in relation to owner/occupier/applicant and gives general comments in a tabulation form.

Time: 1-3 weeks
Cost: Nil

STEP 66
The report from the Planning and Coordination Department is submitted to the Municipal Town Planning Committee for scrutiny of building permit applications.

Time: 1-3 months
Cost: Nil

STEP 67
Successful applicants will be notified through local newspapers or by notice in the municipal notice board.

Time: 1 month or less
Cost: Nil

STEP 68
Applicant comes and collects their building permits from the Department of Planning and Coordination.

Time: 1 day
Cost: Transport TShs. 10,000

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PROCEDURE TO TRANSFER AND REGISTER FORMAL PROPERTIES

1. INTRODUCTION

This sequence shows, step by step, the procedure to legally transfer urban real estate property rights based on a sales contract. Formal transfer requires compliance with provisions of the Land Act No 4 of 1999 and the Land Registration Ordinance. The times and steps were taken from a series of files examined in the field. It is important to note that the registration process contemplated an eventual objection from the registrar. When this happens, the interested party must make the necessary amendments in accordance with the observations made by the registrar and begin the procedure from the beginning.

2. LAWS AND REGULATIONS APPLICABLE

- Land Act No 4 of 1999
- Land Registration Ordinance (Cap 344)
- Survey Ordnance Cap 390
- Town and Country Planning Ordinance Cap 378
- Stamp Duty Act 1972
- Income Tax Act 1973

3. ENTITIES/INSTITUTIONS INVOLVED

- Lawyer
- Authorized witnesses
- Land Registry
- Commissioner for Lands (District Land Authorized Officer)
- Land Surveyor
- Town Planner
- Valuer from the Land Valuation Section of the Land Ministry
- Land Surveyor of the District Surveying and Mapping Office

4. DESCRIPTION OF THE PROCEDURE

STAGE 1: Entering into a sales/purchase agreement (from 3 to 4 weeks)

STEP 1
On-Site Verification
Verify with owner and neighbors if there are any disputes over the property

Time: One day
Cost: Transportation, photocopies, and maps

STEP 2
Official Search
So that the buyer can determine if the seller is the real owner of the plot and if the plot is free from any encumbrances, he/she must apply for an official search at the registry of titles. The application is submitted to the appropriate land registry.

Time: 1 day
Cost: Nil

STEP 3
The registrar carries out the official search on the plot and sends back a certified summary of the entries on property. This certificate must have the name of the seller and certify that there are no encumbrances on the property (e.g. mortgages).

Time: 1 to 2 weeks
Cost: Official search fees: TShs. 2,000 minimum for plots with title numbers or TShs. 4,000 for plots with plot numbers alone, photocopies, and transportation

STEP 4
Sales Contracts
Parties enter into a prospective[1] sales contract. The transaction must be written. Authorized witnesses, as per the Registration of Documents Ordinance (Cap 117), complete the document.[2] The pictures of both transferor and transferee must appear together with their signatures on the document.

Time: One week (time required by advocate to draft the contract)
Cost: Advocate fees: between TShs. 30,000 and TShs. 50,000; photocopies: TShs. 1,000; and transportation: between TShs. 1,000 and TShs. 10,000

STAGE 2: Approval by the District Land Officer[3] (6 months)

STEP 5
Notification of the disposition to the Authorized Officer in the District Land Department

[1] Conditioned on the approval from the responsible officer of the Ministry of Lands.

[2] No deed shall be registered unless executed by all persons who are parties thereto.

[3] Section 36 of the Land Act of 1999 prescribes that, any person proposing to carry out a disposition shall send or deliver a notification in the prescribed form to the Commissioner or an authorized officer before or at the time the disposition is carried out together with the payment of all premia, taxes, and dues prescribed in connection with that disposition.

The seller notifies the Commissioner (District Authorized Officer of Land Administration) of his intention to dispose of his right of occupancy. Land Form No. 29 and No. 30 are completed. The certificate of occupancy or letter of offer and three sets of the deed of disposition accompany the form used for such purposes.

Time: 1 day
Cost: Photocopies TShs. 5,000; transportation from TShs. 1,000 to TShs. 10,000

STEP 6
Valuation Report
The Valuation office at the Valuation Section of the Ministry of Lands and Human Settlements in the District carries out a field inspection. If the assigned valuer finds that the holder has not complied with the conditions for the right of occupancy, the file will be referred to a land allocation committee who will evaluate the case. If the assigned valuer finds that the land has been developed according to the conditions set for the right of occupancy he/she will make a valuation report.

Time: 2.5 months
Cost: Valuation report fees, minimum TShs. 8,925 (negotiable); consent fees, 1% of the property value; transportation; and photocopies.

STEP 7
Payment of Stamp Duty and Capital Gains Income Tax for the Transfer of Property
The seller must pay a stamp duty and the capital gains income tax equivalent to 4% of the valuation of the property, as established in the valuation report. Payment must be made at the Tax Revenue Authority Office.

Time: 1 day
Cost: Stamp duty (4% of the value of the property)

STEP 8
Payment of Rent
The property (land) valuer issues a Land Rent Assessment sheet. All the rent related to the plot must be paid. Penalties for any default must be paid at the Minister of Lands Rent and Records Department.

Time: 1 day
Cost: Rent related to the plot

STEP 9
Notice from the Land Administration Section of the land Department in the District

The Land Department Officer of the District Land Administration Section may on receipt of a notification of a disposition issue a notice in the prescribed form to the parties requiring that they not proceed with the disposition until certain conditions are met. Parties to a contract must agree to the way to comply with the conditions stipulated in the title.

Time: Depends on compliance to the notice
Cost: Nil

STEP 10

Approval from the Land Administration Section of the Land Department in the District

The Land Department Officer of the District Land Administration Section issues a report on the transfer of rights of occupancy.

Cost: At the discretion of the officer

STEP 11

Approval from the Authorized Officer in the District

The authorized officer issues a Certificate of Approval of a Disposition (Land Form No. 33). A copy is issued for registration purposes.

Cost: At the discretion of the officer

STAGE 3: Approval and Registration at the Registrar of Titles Main Office[4] (six months)

STEP 12

Application for approval and registration of a disposition

An application for a transfer approval and registration is submitted to the Registrar of Titles main office[5]. Landform No. 30 and 35 should be filled indicating the nature of the transaction, the particulars of the purchaser and the attached documents.

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[4] According to section 8 of the Registration of Documents Ordinance (Cap 117), the registration of non testamentary documents which transfer any right or title whether vested or contingent to, in, or over land is compulsory. No document of which the registration is compulsory shall be effectual to pass any land or any interest therein or render such land liable as security for the payment of money or be received as evidence of any dealing affecting such land unless and until it has been registered.

[5] According to section 2 of the Land (disposition of right of occupancy) Regulations, 2001, every application for a grant of approval for a disposition

a) shall be made on a prescribed form;
b) signed by all the applicants;
c) shall be accompanied by the certificate of occupancy or letter of offer, three sets of the deed of disposition and evidence of payment of all rent, taxes, and dues owed to the Government for the current fiscal years;
d) shall be submitted to an authorized officer of the area in which he is situated

The seller applies to the Registrar (Main office) of his intention to dispose of his right of occupancy attaching the following annexes:

- Original letter of offer
- Original and rent receipts up to the date of application
- Original deed of transfer (in duplicate)
- Approved valuation report
- Valuation fees receipts
- Consent fee receipts.

Cost: Consent fees, TShs. 5,000; transportation, TShs. 10,000; photocopies TShs. 5,000

STEP 13

Entry in Presentation Book

The assistant of the Land Registration Section reception enters a short description of the documents presented for registration with the day and hour. A receipt is given to the applicant for purposes of priority. The time of presentation must be taken as the time of registration.

Time: Same day
Cost: Nil

STEP 14

Distribution of the Document

The registrar at the Land Registration Section examines the document, received the previous day, to determine what needs to be done. He then distributes the document to the respective officer (land registry assistant).

Cost: Nil

STEP 15

Assessment of the Document

The assistant officer examines the documents and indicates his observations on the document and makes a recommendation to the registrar indicating whether or not the document should be approved for registration. The main aspects to be evaluated are the following:

- That the stamp duty has been correctly paid
- That the registration fees have been correctly paid
- That the consent from the authorized officer, required before registration, has already been given
- That the name of the owner agrees with the records
- That there are no encumbrances that may stop the registration
- That there a probate and administration decision have not been handed down before
- The correctness of the attestation and executions related to the contract

- The validity of the right of occupancy

Cost: Nil

STEP 16
The Registrar Assesses Fulfillment of Legal Requirements
Before registration of any document, the registrar must ensure that all legal requirements have been fulfilled before a document can be registered.

Cost: Nil

STEP 17
Registration
Registration consists of filing a duplicate or copy of the document presented for registration in the appropriate register. A transfer is noted on the original copy of every document registered, recording the hour and date of presentation. Every duplicate or copy filed bears the number of the volume and folio in which the same is registered, along with the hour and date of registration.

Cost: Nil

STEP 18
Issuance of an official copy of the registered transaction
The registrar must seal and sign the transfer as well as the duplicate.

Cost: Nil

STEP 19
Delivery of a Copy of the Registered Document
A duplicate of the registered document is given to the applicant.

Cost: Transportation

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PROCEDURE TO IMPLEMENTE THE VILLAGE LAND REGISTRY

1. INTRODUCTION

The objective of the procedure is to legally grant certificates of customary rights of occupancy and rural real estate property rights by transforming unwritten customary rights of land into written contracts between the individual rural landowners and the Village Council. Formal change of ownership from unwritten customary rights of land requires compliance with the provisions of Village Act No 5 of 1999. According to this law, village land is all land that is neither general nor reserved land, and falls under the administration of gazette villages registered by the local authority under section 22 of the District Authorities Act No 7 of 1982.

The following procedure is based on information obtained from land officers and land use planning commission officials. It is important to note that to date, the only areas where the village land registry has been implemented is Mbosi, and two villages in Iringa. The procedure includes all the necessary steps to implement the Village Land Registry, as well as those for obtaining rights of occupancy.

2. LAWS AND REGULATIONS APPLICABLE

- Land Act No 4 of 1999
- Village Land Act No.5 of 1999
- Land Courts Act No.2 of 2002
- Land Registration Ordinance (Cap 344)
- Survey Ordnance Cap 390
- Town and Country Planning Ordinance Cap 378
- Village land regulations
- Customary laws

3. ENTITIES / INSTITUTIONS INVOLVED

- Land occupier/Villager
- Village Assembly
- Village Council
- Village Chairman and Village Executive Officer
- Village and District Land Registries
- Authorized Land Officer
- Village and District Land Registry
- Land Use Planner
- Registry
- Land Surveyor
- Land Appraiser

4. DESCRIPTION OF THE PROCEDURE

STAGE 1: Training for Regional Authorities, District Authorities, the Village Assembly, and Village Councils on the Village Land Act No. 5 of 1999

STEP 1

Training of Regional and District Authorities

Inform the regional and district authorities about the procedures involved in implementing the Village Land Act so that they can in turn train the village councils and village assemblies.

Time: Two days, one for each authority, district and regional
Cost: TShs. 20 million, including transportation, books of Village Land Act and Regulations, flip charts, trainers from the Ministry of Lands, Land Use Commission, or experienced NGOs.

STEPS 2 & 3

Train Village Assembly and Village Council

Inform the village assemblies and village councils about the procedures involved in implementing the Village Land Act so that they can implement the law.

Time: Depends on the number of villages in the district.
Cost: Each village will cost approximately TShs. 5 million, which includes costs for transportation, copies of the Village Land Act and Regulations, training manuals, and trainers from the District, Regions, or NGOs.

STEPS 4 & 5

Intensive Training for Village Executive Officers and Chairpersons

Train the village leadership on how to fill out various forms, adjudicate land, and form committees to aid in land management.

Time: One week training at the ward level
Cost: Approximately TShs. 3 million for each ward, which includes costs for books of Village Land Act, training manual, village land regulations, trainers from the district or NGOs, and transportation.

STAGE 2: Establishment of District and Village Land Registries

It is important to strengthen district offices and establish them at the village level if village land offices and district land registries are to be established to register certificates of customary rights of occupancy.

STEP 6

Construction of new district land offices and land registries or the renovation/repair of existing sites

The objective is to set up standardized district offices and land registries that comply with the conditions established in Section 25 of the Village Land Act and Regulations 36 to 60.

Office renovations and repairs are for the purpose of providing secure custody of documents for the registration of certificates of customary rights of occupancy.

Time: Depends on whether the process involves renovations or construction of a new office and land registry. Some districts may require minor renovations.
Cost: Depends on what the process entails: Building materials, office space, labor, partnership with District Council, and transportation.

STEP 7

Construction of a new village land office and land registry or the renovation/repair of existing sites

The objective is to set up standardized village offices and land registries that comply with the conditions established in Section 25 of the Village Land Act and Regulations 36 to 60.

Renovations and office repairs are for the purpose of providing secure custody of documents for the registration of certificates of customary rights of occupancy.

Time: Depends on whether the process involves renovations or construction of new sites. Some villages may require minor renovations.
Cost: Depends on what the process entails: Building materials, office space, labor, partnership with District Council, and transportation.

STEPS 8 through 10

Distribution of land registry documents at district and village land offices (ensuring that both registries are functional)

The existence of land offices and land registries in districts and villages implies distributing various documents for adjudication, land allocation, registration, and entries to the registries in both locations. These documents are prepared by the Commissioner of Lands and distributed to the districts, which in turn distribute the documentation to the village land offices and land registries.

Time: Depends on the distance from Dar es Salaam. May vary from one to five days.
Cost: Depends on the distance from Dar es Salaam. May cost from: TShs.10,000 to TShs. 5 million, which includes costs for transportation and officer in charge.

STAGE 3: Processing Village Land Certificates

The Commissioner of Lands issues the Certificate of Village Land to the villages, which are now empowered to manage village land and issue certificates of customary rights of occupancy to individual landowners on village land.

STEPS 11 through 13

Once the village council has received appropriate Village Land Act training, it may, with the permission of the village assembly, determine that a certificate of village land is necessary. Boundary dispute resolution is the first step in the certification process.

The village council must meet with neighboring village councils to ensure that no village boundary disputes exist. In the case of disputes, the village council committee on boundary disputes will be responsible for mediation. If disagreement arises, the certificate of village land will be withheld until the dispute is resolved. Should the village applying for said certificate possess a boundary survey plan for the village, it may refer said survey to the Commissioner of Lands for consideration.

Time: Depends on the degree of conflict with surrounding Villages. In any case, this step generally takes no less than a month.
Cost: Allowances for the boundary clearing and negotiation committee, which costs a minimum of TShs. 500,000, depending on village size. This includes costs for machetes, cement, labor, beacons, surveyors, etc.

STEPS 14 through 22

Request for a Certificate of Village Land before the Commissioner of Lands

If there are no village boundary disputes with surrounding villages and an agreement has been reached regarding existing village boundaries, a survey map can be drawn up to validate boundary agreements. However, a sketch prepared through GPS processes or by a competent surveyor may suffice to obtain a village land certificate.

The Village Assembly must pass a resolution to apply for a certificate of village land and the village council will submit the resolution to the District Council, which will send it to the Commissioner of Lands. The authorized officer will fill out form No.16 and forward it to the village council to be signed and sealed. This document will then be submitted to the authorized officer who then forwards it to the Commissioner for Lands.

The authorized district officer is required to follow up on the process until the certificate of village land is obtained from the Commissioner for Lands.

Time: Depends on how far the officer is located from the village in question and his/her willingness to conduct follow-ups. Generally, this step takes a minimum of three months.
Cost: Costs vary from officer to officer, depending on transport costs incurred relative to distance traveled, etc. Follow-up period may be extensive, increasing costs accordingly. The estimated cost is no less than TShs. 100,000, which includes costs for stationary, transport, follow up officer, telephone follow up, and fax costs.

STEPS 23 through 27
Village land management after receiving a Certificate of Village Land
After obtaining a certificate of village land, the village council prepares a village land use plan as provided by sections 7 to 14 of the Village Land Act. The village land use plan will detail landowner interests and a GPS system will be used to map the land. The map will show areas for conservation such as water sources, forest reserves, wildlife protection, roadways, utilities, etc. Areas designated for conservation will not be issued to individuals unless consent is obtained from the appropriate authority at a district level. Land held under customary law (such as farms, houses for residence, and spaces for religious purposes) must also be identified. These areas can be issued customary right of occupancies. The plan will also show areas for future village expansion and areas for communal management with neighboring villages such as forest reserves and grazing land or water sources overlapping with nearby villages. The village land use plan will be forwarded to the district council for endorsement before it is brought back to the Village Assembly for approval. Copies of the approved land use plan will be sent to the District Council and Land Use Planning Commission to be published in the official gazette.

Time: Depends on support from the district land use planner and other district team members or from a competent NGO. May take three or more months.
Cost: Depends on technical support from the district or NGO. At the village level, the cost is at least TShs. 10 million, which includes costs fro transport, multidisciplinary district team, allowances, stationary, maps, and GPS.

STAGE 4: Processing Certificates of Customary Rights of Occupancy

The landowner’s main interest is to obtain a certificate of customary rights of occupancy, which can be used as collateral for loans. The certificate of customary rights of occupancy is issued by the Village Chairman and the Village Executive Officer after the village assembly has approved land adjudication and it has been verified that no conflicts of interest related to the parcel of land exist or have been detected.

STEPS 28 through 33

Land adjudication before obtaining a certificate of customary right of occupancy

Prior to land adjudication, a land occupier/villager will go to the village land registry and fill out form No. 18 to request a certificate of customary rights of occupancy. The form must also be signed with by least two members of a family unit or leaders of a traditional group or authorized officers of an organization. In addition he must obtain form No. 44 to request that the village council adjudicate the parcel of land in question. The completed forms will be submitted to the village council.

The village council will review both forms and if it endorses the petition, it will forward the respective documentation to the village assembly for approval. If the village council does not endorse the request, it will inform the landowner so that rectifications can be made and the request can be resubmitted for consideration.

In the case of denial, a possibility exists to rectify issues or appeal to the district council or the Village Land Council for reconsideration. The district council or the village land council may direct the village council to proceed with adjudication of the parcel in question.

A village land adjudication team will visit the parcel of land after informing the adjacent landowners and, with their approval, will proceed to mark the boundaries of the parcel of land. Clear boundaries will be established and a surveyor will draw up a sketch map using a hand-held GPS. The map will show the parcel's measurements, adjacent landowners and easements should the latter cross the parcel in question. The district surveyor will issue a parcel number for identification purposes.[1]

Time: Depends on whether or not conflicts exist with neighboring parcels of land. May vary, but generally takes a minimum of one week.
Cost: Depends on the conflicts surrounding the parcel being adjudicated. A minimum of TShs. 50,000 may be required to have the land adjudicated and all documentation completed.

STEPS 34 through 45

The process of issuing a certificate of customary rights of occupancy once a map has been drawn of an adjudicated parcel of land

The main objective is to examine how individuals acquire written rights of occupancy to land, issued under customary law, which lacks formal titles.

Under this process, the village executive officer replies to the landowner after the latter has received approval from the village assembly by filing form No. 19, which is a request form for the right of customary rights of occupancy.

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[1] The team will need software and hardware for surveying data processing.

The landowner in turn completes form No. 20, which binds the landowner to fulfill all corresponding conditions. Some of the conditions may include payment of adjudication fees, land rent, and other fees to be determined by the village council. The form is returned to the village executive officer.

The village executive officer fills out form No. 21, which is the certificate of customary rights of occupancy for the parcel of land. Next, he will register the parcel in the village land registry. The landowner must sign the form and attach a recent photo; the form must be stamped with the village council seal. The form will be filed with four copies; three copies will be forwarded to the authorized district officer for registration in the district land registry.

Two copies of the form will be returned to the village executive officer. One copy will be issued to the landowner and the other copy will be kept in the village land registry.

Time: Depends on the distance from the district land registry and discretion of the authorized officer. Some authorized officers may delay the procedure, impeding that a certificate of customary rights of occupancy be issued in a timely manner. A minimum of one month is required for this step.
Cost: Depends on the authorized officer, who may delay the procedure. A minimum of TShs. 50,000, including legal fees.

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PROCEDURE TO ALLOCATE LAND FOR URBAN PURPOSES[1]

1. INTRODUCTION

The objective of the procedure is to provide urban plots under a planned town (urban area) with common standards (such as sizes, adequate infrastructure and other basic social services). The aim is the development of the targeted area. The process includes the formal acquisition of the area, planning and surveying, compensation of the residents and issuance of the Certificate of Title in compliance to the Town and Country Planning Ordinance (cap 378) 1956, Land Acquisition Act 47 1967, Land Act No. 4 of 1999 and other related laws. The process involves National Level, Municipality Level and individual household level for proper acquisition and compensation of the area concerned.

2. LAWS AND REGULATIONS APPLICABLE

- Land Act No. 4 of 1999
- Land Registration Ordinance (cap 344) of 1954
- Land Acquisition Act of 1967
- Town and Country planning Ordinance (cap 378) of 1956, revised in 1961
- Land Surveying Ordinance (cap 390) of 1957
- Local Government (Urban Authority) Act 1982
- Public Health (Sewerage and Drainage) Ordinance (cap 336) of 1950

3. ENTITIES / INSTITUTIONS INVOLVED

- Town Planning Section at the Municipality, under the Planning and Coordination Office headed by Municipal Town Planning Officer
- The Land Delivery Office at the Land Development Services Division at the Ministry of Lands
- Human Settlement Department at the Ministry of Lands
- Minister of Land
- Government Gazette
- Property Valuation Agency at the Ministry of Lands
- Ward Executive Officer of the locality
- District and Regional Commissioner
- Land Development Department at Municipality (Authorized Land Officer)
- Treasury
- Municipal Cashier

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1 This procedure is based on the studies made by Professor J. M. Lusugga Kironde of the University of Dar es Salaam, and files and information provided by public officials.

- Area Planning Committee for Infrastructure and Human Settlement at the Municipality
- Planning and Coordination Office
- Human Settlements Development Division
- Surveys and Mapping Unit of the Urban Planning Section under The Planning and Coordination Department
- Surveys and Mapping Division at the Ministry of Lands
- Land Commissioner
- Registrar of Titles in the Land Ministry

4. DESCRIPTION OF THE PROCEDURE

STAGE 1: Identification of a Suitable Area

Time: 1 year or less, depending on the demand and on the availability of land.
The Town Planning Section at the Municipality identifies a suitable area for development. Additionally, the process involves the participation of other local authorities (such as Ward Executive Officers and Ten-Cell Leaders), including grassroots leaders and individuals.
Purpose: Knowing the boundaries of the identified area and the existing conditions.

STEP 1
The Town Planning Section —in collaboration with the Human Settlement Department at the Ministry of Lands— is in charge of identifying suitable areas. This involves acquiring a base map of the area, and surveying the land to determine whether it is suitable for development and if so to determine what type of development [2] (e.g. housing, industrial, commercial, institutional, etc.). In addition, it involves determining how many people would be affected by the development.

STEP 2
The Town Planning Section, after the identification process, must notify the Human Settlement Department.

STAGE 2: Declaration of the Area to be Planned and Notification of the Property Owners

Time: 1 year to 1 and a half-year

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2 If there is any need to enter the premises for identification purposes, the Human Settlement Department at the Municipality is in charge of notifying the occupants, at least 3 days in advance. As we were informed at the Ilala Municipality, ordinarily no notice is served although the law (Land Acquisition Act No. 47 of 1967) requires them to do so. The local authorities leaders, such as the ward executive officers, ten-cell leaders (Balozi/Mjumbe), notify the land occupiers.

The Minister of Lands, by order published in the public gazette, declares the area to be a Planning Area.
People are notified of their area to be under planning scheme and that the government is in the process of acquiring it for public purposes. The government may use officials such as the Ward Executive Officer, the District Commissioner, and the Regional Commissioner to mobilize the occupiers.

According to S. 7 of The Land Acquisition Act of 1967, occupiers of the selected land may be given a period before yielding possession (e.g.: to harvest their crops).[3] Nevertheless, people cannot be told to vacate land without first obtaining due compensation. The rights of landowners are only extinguished after due compensation.

STEP 3
The Land Delivery Office of the Land Development Services Division at the Ministry of Lands must prepare the notice declaring the area to be a Planning Area. The notice, which prevents occupiers from conveying any part of the selected area, states the government's intention of acquiring the land for public purposes (in accordance with S. 7 and 8 of the Land Acquisition Act 1967).

STEP 4
The Minister of Lands, on behalf of the President, must sign the notice to be published in the official gazette and the notification to each occupier of the selected land.
An officer from the Ministry of Lands, with the assistance of the Ward Executive Officer and/or Ten-Cell Leader of the locality, must notify each occupier. However, this step is often limited to the publication of the notice. Consequently, occupiers more often than not are not aware of the notice of the government's decision to develop the area.

STEP 5
The Land Delivery Office must send the same notice for publication to the government gazette.

STAGE 3: Valuation of Existing Interests

Time: 1 year
The Property Valuation Agency at the Ministry of Lands, by way of Ward Executive Officers at the concerned Municipality, goes to the area and evaluates each property. They mark and count each tree, the types of crops, and the number of buildings found in the area.

3 The President may acquire any land when it has been selected and required for public purposes. Land for public purpose is defined as that to be used for any government scheme, such as for the development of housing. (e.g. Kipawa area, near Dar es Salaam International Airport, by notice published in the official gazette, according to S. 7 of the Land Acquisition Act of 1967)

From this data, they prepare a compensation schedule for each landowner.

STEP 6
The Property Valuation Agency at the Ministry of Lands must send a team of government valuers to the land in question. Each property is valuated and the owners (occupiers) are listed.

STEP 7
The Property Valuation Agency prepares a compensation schedule for the property of each occupier.

Cost: TShs. 300,000 to TShs. 500,000 per acre at government rates
Transportation: TShs. 1,000 to TShs. 10,000

STEP 8
The Chief Valuer from the Property Valuation Agency approves the compensation schedule for each property owner.

STEP 9
The Compensation Schedule must be signed by the Ward Executive Officer of the locality, and the District and Regional Commissioner.

STAGE 4: Effecting Compensation Payment

Time: 1 to 2 years[4]
The occupiers shall be compensated according to the S.12 of the Land Acquisition Act of 1967 and Land Act No. 4 of 1999. Compensation will be effected as per the compensation schedule and occupiers may also be compensated for disturbance allowances.
Payments are made at the Municipality. If there are any delays (for instance, owner not located), payments may be made by the Cashier at the Property Valuation Agency.

STEP 10
The Director of the Land Development Department at the Municipality (Authorized Land Officer), through the Ministry of Land, requests the compensation amount from the Treasury.

STEP 11
The Treasury disbursement is authorized

[4] There is a special case in Kipawa —to date, it has already taken more than 7 years.

STEP 12
The Director of the Land Development Department at the Municipality must announce in the municipal notice board that compensation is available.

STEP 13
The municipal cashier pays the compensation.

STEP 14
Once occupiers receive due compensation, they must vacate the land.

STAGE 5: Preparation and Approval of the Detailed Planning Scheme

Time: 6 months
The Town and Country Planning Ordinance of 1956 gives the minister responsible for town planning powers to declare areas to be planning areas, to appoint planning authorities, to make planning regulations, and to prepare and/or approve planning schemes.
No development is allowed in a planning area without planning consent from the Aerial Planning Committee at the Municipality.
Here we assume that the General Planning Scheme has been approved. Therefore, we move on to the next step: the Detailed Planning Scheme.

STEP 15
The Area Planning Committee for Infrastructure and Human Settlement at the Municipality makes the decision to prepare a Detailed Planning Scheme.

STEP 16
The Town Planning Section prepares the Detailed Planning Scheme.

STEP 17
The Detailed Planning Scheme is deposited for public inspection in the Town Planning Section, and is submitted to the Urban Planning Committee for Infrastructure and Human Settlement of the Municipality, for scrutiny.5

STEP 18
The Urban Planning Committee for Infrastructure and Human Settlement approves or rejects the Detailed Planning Scheme.
If it is disapproved, the Town Planning Section will be required to amend the plan.

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[5] The deposit is for public inspection. Since there may be some objections, these are also posted for further public scrutiny.

STEP 19
The Municipal Town Planning Officer at the Planning and Coordination Office submits the detailed plan to the Human Settlements Development Division in the Ministry of Lands for approval.

STEP 20
The Director of the Human Settlements Development Division approves the submitted plan.

STEP 21
The approved plan is registered in the Human Settlements Development Division in the Ministry of Lands.

STEP 22
The Human Settlements Department in the Ministry of Lands sends a copy of the registered Plan to the Municipality.

STEP 23
The Human Settlement Department at the Municipality distributes copies of the Registered Plan to the utilities companies (TANESCO, City Water and TTCL), as well as to the Surveys and Mapping Unit of the Urban Planning Section under the Planning and Coordination Department so that it can proceed with the surveying process.

STAGE 6: Surveying the Land

Time: 1 to 2 years
A subdivision scheme should result from survey works. The land should be surveyed in order to prepare a survey plan within the meaning of the Survey Ordinance (Cap 390).
Public or private surveyors could do the survey, but the assumption is for a public surveyor.

STEP 24
The Surveys and Mapping Unit at the Urban Planning Section under The Planning and Coordination Department at the Municipality carries out site inspections, reconnaissance, and job planning (field work).

STEP 25
The surveyor must carry out a control survey in order to establish relationships with past surveys (office work).

STEP 26
The surveyor demarcates and adjudicates in favor of the Plan Scheme (the latter only when the Plan overlaps an unplanned area).

STEP 27
The Surveys and Mapping Unit processes and compiles the data. A cadastral map is drawn (office work).

STEP 28
The Surveys and Mapping Unit submits the cadastral map and the survey reports to the Surveys and Mapping Division at the Ministry of Lands.

STEP 29
The director of the Surveys and Mapping Division at the Ministry of Land approves the surveyed plan and registers it.
If disapproved, it is sent back to the Surveys and Mapping Unit at the Municipality for correction.

STEP 30
The Surveys and Mapping Division keeps the approved surveyed plan and distributes copies to the Land Commissioner, the Human Settlement Development Division, and the Municipality.

STAGE 7: Issuing Letters of Offer

Time: 1 month (up to 6 months in a few special cases)
Letters of Offer are offered in the municipality after complying with certain requirements, including those mentioned below.

STEP 31
The Ministry of Lands, through the Land Delivery Office at the Land Development Services Division, advertises the availability of plots in the newspaper. Once the announcement has been made, people can begin submitting applications to the municipality.

STEP 32
Forms are available at the Land Development Department at the Municipality. Applicants must obtain and fill in the forms. Applications must be filled in and submitted at the Authorized Land Officer.

Cost: TShs. 2,000 fees for application forms

STEP 33
The Authorized Land Officer at the Municipality takes the applications to the Municipal Allocation Committee to approve the allocation of plots.

STEP 34
The Allocation Committee assesses[6] all applications. Names of successful applicants are kept on the municipal notice board so that they can proceed with the process of obtaining letters of offer.

STEP 35
The Authorized Land Officer in the Municipality prepares and signs the letters of offer.

STEP 36
Applicants go to the Municipality to choose the plots they applied for and receive instructions for payments from the Authorized Land Officer.

STEP 37
Applicants fill in forms for payment, submit the receipts of payments to the Authorized Land Officer, and then collect the Letter of Offer. This Letter of Offer contains the conditions to develop the land.[7]

STAGE 8: Acceptance of Letters of Offer

Time: 1 month

STEP 38
Applicants fill in the Letters of Offer and submit four copies of recent passport photographs to the Authorized Land Officer at the Municipality.

STAGE 9: Issuing of and Registering a Certificate of Title

Time: 1 to many years

STEP 39
The Authorized Land Officer at the Municipality prepares the Certificate of Title (Land form No. 22).

STEP 40
Applicant signs the certificate before the advocate in the Municipality.

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[6] According to the Land Act, the Committee shall consider: i) an applicant's ability to develop the land in accordance with development conditions; ii) whether the applicant has attained the age of majority save where the minor's application is accompanied by the guardian's evidence of intention and ability to develop the land; iii) whether the applicant has other land under a granted right of occupancy or customary right of occupancy; iv) basis of first in first out; v) principles of equity, reasonableness, fairness and gender balance; vi) the needs of disadvantaged groups.

[7] Every right of occupancy shall be subject to any development or other conditions which may be prescribed or the Commissioner may impose and which are not inconsistent with the Land Act of 1999.

STEP 41

The Authorized Land Officer sends the signed Certificates of Title to the Commissioner for Lands at the Land Development Services Division at the Ministry for Lands to complete the contract by signing on behalf of the President.

STEP 42

The Land Commissioner sends the certificates to the Registrar of Titles in the Land Ministry for Registration.

STEP 43

The Registrar of Titles in the Land Registry accepts or rejects the certificate's registration.

STEP 44

The Registrar of Titles informs the Land Commissioner with a covering letter regarding the registration/or denied registration of the Certificates of Titles.

STEP 45

The Registrar of Titles sends the registered Certificates of Title back to the Municipality.

STEP 46

The applicants of Certificates of Titles are informed, by either a covering letter or a notice through the notice board, to come to the Municipality and identify themselves to the Authorized Land Officer in order to collect their certificates.

STEP 47

The Authorized Land Officer in the Municipality delivers the Certificates of Title to applicants as their rights of occupancy over the occupied plot are identified.

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PROCEDURE TO OBTAIN A BUILDING PERMIT[1]

1. INTRODUCTION

The following sequence of steps shows the procedure to obtain a building permit for residential purposes. Building Regulations deal with the minimum standards of designing and building works for the construction of domestic, commercial and industrial buildings.

Regarding property rights, obtaining a building permit is also a condition for the maintenance of a right of occupancy. According to section 34 of the Land Act Nº 4 1999, it shall be a condition in every grant of a right of occupancy, where the purpose for which the grant has been made is to construct buildings on the land, and that the grantee of such right shall apply for a building permit under the Township (Building) Rules within six months of the grant of the right of occupancy.

The land (conditions of rights of occupancy) regulations 2001 regulation 6, establishes that when the land in subject of a granted right of occupancy in a Planning area or in any urban or peri-urban area is undeveloped or land in a redevelopment area, the occupier thereof shall apply for a building permit under the Township (Building) Rules, 1953 within six months of the grant of the right of occupancy, and shall use the land in conformity with the Town and Country Planning (Use Classes) Regulations, 1960.

Failure to obtain a building permit before any buildings are erected will result in a fine of 2% of the market value of the development. And sometimes the developer may be ordered to demolish the building if found to be of low standards; i.e. unfit for the aimed purposes.

Building control law and regulations started from the colonial period. Mainly governed by the Country and town planning ordinance (1956) and township (building) Rules (cap 101), Building Regulations contain a list of requirements, which are designed to ensure the health and safety of people in and around buildings within the town.

The following are the main steps to get a building permit:

1. Present the drawings and pay a scrutiny fee
2. Check and analyze the ownership and survey plan
3. Check and inspect the architectural drawings
4. Inspect the plot
5. Inspect the use of the building and its ratios

[1] This procedure is based on information kindly provided by municipal officers.

6. Inspection of the plan by the health or waste management officer
7. Inspection of the drainage and sewage system by the health or waste management officer
8. Inspection of the quality of the building by the municipal engineer and or architect
9. Presentation in the meeting of the council after fulfilling all the procedures
10. Prepare and issue the permit

2. LAWS AND REGULATIONS APPLICABLE

- Land Act 1999 Section 34 and
- The Land (Conditions Of Rights Of Occupancy) Regulations 2001 Section 6
- Town and country planning Ordinance of 1956
- The township (building) Rules (cap 101)
- Local Government Act No 7 and 8 of 1982.

3. ENTITIES/INSTITUTIONS INVOLVED

- Municipal Town planning committee – deals with the application for the building permit and the approval or denial of the application
- Authorized Land officer in the Land Development Section
- Town planning section
- The municipal Architect in the Planning and Coordination Department to approve the building plan
- Consultant/Licensed Architect-prepares the building plan
- Municipal Accountant/Cashier
- The applicant
- The Municipal Planning and Coordination department, which deals with the evaluation of the whole plan.
- The municipal Health Department-deals with waste management and drainage system
- Municipal Accountant/Cashier

4. REQUIREMENTS

- Letter of offer or certificate of title if the plot is located in a surveyed area
- Abstract of site plan
- Land rent receipt
- Site and location plan drawings – set of 4 copies
  - Floor plan
    - Section
    - Elevation of all sides roof plan
    - Drainage sketch
- Given receipt
- Site report approval

What should appear in the Drawings: The prepared drawings must show the following:

- Appearance of the building (plans, sections, elevations, foundation and roof plan)
- Area and plot number
- The name of the owner of the plot
- The name of the Registered Architect (Firm) and registered Engineer (Firm)
- Area of the building in square meters (m^2)
- Plot coverage
- Plot ratio
- Height
- Intended purpose/use
- Number of intended parking spaces
- Setbacks
- Drainage and sewage system

Annexes:

- One correct/accurate and completed application form
- The certificate of Right of occupancy or letter of offer
- Other related and relevant documents such as sale agreement, etc.
- Copies of receipts of both Land and Building rents
- Change of use, if any

5. DESCRIPTION OF THE PROCEDURE

STAGE 1: Applicant Hires a Licensed Architect and Presents his/her Requirements to Have a Building Design/ Plan.

STEP 1

Applicant takes the licensed architect to visit his site/plot in order to establish the measures and development aspects for the plot.

Time: 1-2 days
Cost: Allowance TShs. 50,000 to TShs. 100,000.
Transport TShs. 10,000 to TShs. 20,000 depending the location of the site.

STEP 2

The licensed architect designs a variety of drawings based on the site he has visited.

Time: 1-2 weeks
Cost: Nil

STEP 3
The licensed architect puts his/her official seal and signature on the drawings (the architect must be registered with the Architectural Board).

Time: 1 day
Cost: Nil

STEP 4
The applicant pays the architect for the drawings and takes them to the Municipal Planning and Coordination Department.

Time: 1 day
Cost: Fees to the licensed architect TShs. 200,000 to TShs.1 million

STAGE 2: Presentation of Filled Forms and Required Documentation

STEP 5
The applicant must prepare four sets of drawings, attaching copies of the Letter of Offer or Certificate of Title to show ownership of the land he/she wants to build on.

Time: 1 day
Cost: stationary and fotocopies

STEP 6
Applicant submits the four sets of architectural drawings to the Municipal Architect who assesses them and payments of scrutiny fees which are set depending on the plan as well as location of plot.

Time: 1day
Cost: Nil

STEP 7
Applicant goes to the Municipal Accountant, pays the scrutiny fees, and submits the receipts to the architect to obtain the forms.

Time: Same day
Cost: Scrutiny fee TShs. 2,000 to TShs. 300,000

STEP 8
Applicant obtains application forms and completes and submits them at the Planning and Coordination Department.

Time: Same day
Cost: Nil

STAGE 3: Office Inspection of the Submitted Plans and Application

STEP 9
The Planning and Coordination Department where the application and submissions were filed completes the initial assessment.

Time: 1-2 weeks
Cost: Nil

STEP 10
Town Planning Section receives the file and the town planner checks the plans and the use group. If satisfied, the Municipal Town Planning Officer signs the application forms in the file and if not satisfied, he makes an observation calling for amendments.

Time: 1-2 weeks
Cost: Nil

STEP 11
Architectural section must check the standards required and whether the architect who prepared the plan was registered or not. It then approves the application if the standards are satisfactory.

Time: 1-3 weeks
Cost: Nil

STEP 12
The architects may be required to visit the site to confirm the existence of the site and its conformity with the plans.

Time: 1-2 days
Cost: Transport TShs. 10,000 to TShs. 20,000

STEP 13
Land Development Section: The Authorized Land Officer must assess the application to ensure that the applicant is the real owner by checking the authenticity of the Certificate of Title. And in case the formalization was incomplete, they will direct it to be completed.

Time: 1-2 weeks
Cost: Nil

STEP 14

Surveys and mapping section: The Municipal Surveyors must check the definite boundaries of the applicant's plot and ensure that they are acceptable. They approve the application by signing and giving recommendations.

Time: 1-2 weeks
Cost: Nil

STEP 15

Health Department: Examines all the arrangements to ensure compliance with sanitation regulations (e.g. drainage and sewage system as well as management of wastes). The health/waste management officer makes recommends, if required, and signs the form.

Time: 1-2 weeks
Cost: Nil

STEP 16

Fire officer: must comment on the security system included in the plan with regard to fire safety. They too make recommendations and sign the form.

Time: 1-2 weeks
Cost: Nil

STEP 17

Planning and Coordination Department: the file is returned to this department for compilation in order to prepare for the meeting.

Time: 1-2 weeks
Cost: Nil

STAGE 4: Meeting for Scrutiny of Building Permit Applications is Supposed to be Held Once Every 3 Months (can be less in special cases)

STEP 18

The Municipal Architect in the Planning and Coordination Department prepares the summary of every plot in relation to owner/occupier/applicant and gives general comments in a tabulation form.

Time: 1-3 weeks
Cost: Nil

STEP 19

The report from the Planning and Coordination Department is submitted to the Municipal Town Planning Committee for scrutiny of building permit applications.

Time: 1-3 months
Cost: Nil

STEP 20

Successful applicants will be notified through local newspapers or by notice in the municipal notice board.

Time: 1 month or less
Cost: Nil

STEP 21

Applicant collects their building permits from the Department of Planning and Coordination.

Time: 1 day
Cost: Transport TShs. 10,000

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PROCEDURE TO OBTAIN PLANNING CONSENT

1. INTRODUCTION

The Town and Country Planning Ordinance (Cap 378) stipulates that in order to effect development of land, one is required to obtain a permission to plan. The purpose of the procedure is to identify the standards that must be taken into account for the desired land development.[1]

According to the Land (conditions of rights of occupancy) Regulations 2001,[2] when the land that has a granted right of occupancy is located in any urban or peri-urban area, the beneficiary thereof shall apply for: planning consent under the Town and Country Planning (application for planning consent) Regulations 1960. Additionally, the beneficiary must apply for a building permit under the Township (building) Rules, 1953 within six months of the grant of the right of occupancy and shall use the land in conformity with the Town and Country Planning (use classes) Regulations, 1960.

Failure to obtain planning consent or building permit before the erection of any buildings may lead to a penalty of 2% of the market value of the development.

Planning consent is required:

- When the proposed development is the subdivision or layout of land
- When the proposed development implies a change of use of land or premises
- When the proposed development involves any building, engineering or mining works

Some urban authorities integrate ***planning consent*** procedures within ***building permit procedures***. Nevertheless, obtaining a ***planning consent*** constitute a separate and obligatory procedure before applying for authorization for subdivisions, amalgamations, and change of use of land or premises.

Any consent or decision made for planning consent shall not exempt the applicant from obtaining consent required for the specific purposes of development.

2. APPLICABLE LAWS AND REGULATIONS

- Country and Town Planning Ordinate Cap 378 1956
- Land Act No. 4 of 1999

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[1] Here, "development" means the carrying out of any building operation, engineering operation or mining operation in, on, under or over land or the making of any change of a substantial nature in the use of land. *Land Act Section 2.*

[2] Government Notice No. 77 published on 4/5/2001 section 6(1)

- The Town and Country Planning (application for planning consent) Regulations, 1960
- Government Notice No. 678 of 1964
- Technical circular No 14 of 1994 on legal requirements regarding planning consents and building permits in urban areas
- Government Notice No. 84 published on 4/5/2001 (The Land Fines Regulations)

3. DESCRIPTION OF THE PROCEDURE

STAGE 1: Drafting Documents

STEP 1

Applicant may hire a professional[3] and presents his/her requirements to obtain Planning Consent, depending on the kind of plans to be made on the site. A site inspection must be made in order to certify the location of the plot.

Requirements for building purposes:

- A block plan to scale of not less than 1/5000 sufficient to show the boundary of the property
- Plans to scale 1/8 inch to 1 foot showing all elevations fronting a street or open space together with a list of external materials to be used, and floor plans showing the proposed use of each floor and internal division where possible.
- A key plan, scale of not less than 1/5000 where necessary to identify the site

Requirements for subdivision or layout of land

- Key plans to scale of not less than 1/5000 where necessary to identify the site
- Layout and subdivision plan to a scale of less than 1/1000 except where the plan would thereby be of an unwieldy sized when a scale of 1/2500 may be accepted. All adjoining and surrounding development shall be shown
- Plans and longitudinal section of roads and drainage to a horizontal scale of 1/1000 and an exaggerated vertical scale of 10 feet to 1 inch and construction cross sections to a natural scale of 10 feet to one inch.

Requirements for change of use of land or premises

- Key plans to scale of not less than 1/5000 where necessary to identify the site
- Where a construction works are to be undertaken, a plan of the proposed works to a scale of 1/8 to 1 foot.

Time: 1-2 days

Cost: Allowance of TShs. 200,000 and above; transport, TShs 10,000 - 20,000, depending on the location of the site.

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[3] May be a land surveyor or architect.

STEP 2
The professional prepares the necessary plans as per required by the land occupier in order to be presented with application for planning consent.

Time **:** 1-2 weeks
Cost **:** Nil

STEP 3
The occupier applies for planning consent at the Human Settlement/Town Planning Department in the Municipality or District in which the plot/land is located (or registered, if so) either by writing a letter of application or filling out the prescribed forms and attaching the sketch showing the location of the plots desired for development plans.

Time: 1 day
Cost**:** TShs 1,000 - 10,000 transport

STAGE 2: Municipal Approval

STEP 4
The Director of Human Settlement/Town Planning Department at the municipality assesses the application and prepares a report with recommendations for the Planning Committee meeting.

Time: Two weeks
Cost**:** Nil

STEP 5
The Municipal Town Planning Committee meets and discusses the application for planning consent and gives their recommendations.

Time**:** 1 to 3 months
Cost**:** Nil

STEP 6
The Director of Town Planning at the municipality prepares a report and sends it to the Director of Human Settlement/Town Planning at the Ministry for Lands and human settlements with the recommendations from the Municipal Planning Committee.

Time**:** 1 – 2 weeks
Cost**:** Nil

STAGE 3: Ministerial Approval (approximately 3 to several months)
Planning consent must be directed to the Minister of Lands and Human Settlements, particularly when change of land or building use is sought.

STEP 7
The Director of Human Settlements at the Ministry for Land and Human Settlement examines the report and recommends that the process be stopped or go ahead, depending on the applicant's compliance with the master plan and with the desired standards. The Director will send his/her recommendations to the Permanent Secretary.

Time**:** 1 - 2 weeks
Cost**:** Nil

STEP 8
After assessing the report, the Permanent Secretary will make his/her recommendations to the Minister so that the latter may approve or disapprove the application, as he/she sees fit.

Time**:** 1 - 2 days, depending on the Permanent Secretary's availability
Cost**:** Nil

STEP 9
The Minister will approve or disapprove the application for planning consent as recommended

Time**:** 1 to several days depending the Minister's availability
Cost**:** Nil

STEP 10
Approved applications will be returned to the Permanent Secretary who will pass it to the Director of Human Settlement for discharge.

Time**:** 1 day
Cost**:** Nil

STEP 11
The Director of Human Settlement/Town Planning will write to the Municipal Director of Human Settlement/Town Planning, informing him/her of the decision regarding the application.

Time**:** 1 - 2 days
Cost**:** Nil

STAGE 4: Delivery of a planning consent

STEP 12

Upon receiving the reply to planning consent, the Municipal Director of Human Settlement will immediately inform the applicant in writing

Time**:** 1 - 2 days
Cost**:** Nil

STEP 13

Applicant receives the reply and proceeds with the development as directed

Time**:** 1 day
Cost**:** TShs 1,000 - 10,000, including transportation

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PROCEDURE TO SURVEY AN INDIVIDUAL PLOT[1]
(Private surveying process in urban areas)

1. INTRODUCTION

The Land Registration Ordinance stipulates that land must be surveyed in order to be registered. Public or licensed (private) surveyors can do the survey. According to regulations, no estate shall be registered and no parcel shall be divided on a disposition, transmission or mutation, except in accordance with an "Approved Surveyed Plan" within the meaning of the Survey Ordinance Cap 390. An "Approved Surveyed Plan" is a plan approved by the Director of Surveying and Mapping at the Ministry of Land.

Similarly, granted rights of occupancy can only be issued on surveyed land. Additionally, for granted rights of occupancy to be valid, they must be registered under the Land Registration Ordinance, Cap. 334.

Once a piece of land has been surveyed, its boundaries are established both on the field and in the cadastre map. Once the survey has been completed, the land will be given a unique identification code.

2. APPLICABLE LAW AND REGULATIONS

- Village Land Act No. 5 of 1999
- Land Act No. 4 of 1999
- Land Registration Ordinance (cap 344) of 1954
- Land Surveying Ordinance (cap 390) of 1957
- Local Government (Urban Authority) Act 1982
- Country and Town Planning Ordinance (cap 378) of 1956

3. ENTITIES/INSTITUTIONS INVOLVED

- Licensed (private) Surveyor
- Survey and Mapping Division /Local Government Land Offices section
- Aerial Photography Unit
- Town Planner
- Authorized Officer

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[1] Note: the sequence of the procedure was based on the report: "Searching for reliable low cost cadastral survey methods" prepared by E.H. Silayo. Department of Land Surveying. University College of Land and Architecture Studies (UCLAS) Dar es Salaam. Costs and time were obtained from interviews with public and private surveyors.

4. DESCRIPTION OF THE PROCEDURE

STAGE 1: Request for Survey

STEP 1
Preparatory step
The need for a survey is determine by an individual in the rural or settled area. The interested party applies to the chairman of the village (*mwenyekiti)* or the chairman of the street (*mwenyekiti mtaa*) for a certificate of ownership.

Time: 7 days
Cost: Fees determined by the *mtaa* (generally, TShs. 5,000)

STEP 2
Request for a survey
The request is based on an inspection by a land officer/town planer and confirmation of ownership issued by the local community and authority where the land is located. The request shall only be directed to a licensed surveyor or government surveyor by completing an SF37 form.

Time: 7 days
Cost: Transportation, TShs. 10,000; allowances, TShs. 20,000

STEP 3
The Municipal Surveyor approves a request for survey
The Municipal Director of Survey and Mapping completes the respective section on the SF37 form. (An official letter may be used as a substitute of this form.)

Time: 7 days
Cost: TShs. 5,000

STEP 4
Survey instructions are issued
The Municipal Director of Survey issues the survey instructions to the municipal surveyor or the private surveyor designated by the applicant.

Time: 7 days
Cost: Copy of survey plan TShs. 4,000; transportation for follow-up TShs. 10,000 (if follow-up is carried out by licensed surveyor); nil, if done by local government surveyor, part of office operations

STAGE 2
Survey Execution

STEP 5
Reconnaissance and job planning
The surveyor visits the site to be surveyed and identifies requirements, plans, and costs of the survey.

Time: 3 days
Cost: fees TShs. 30,000 per surveyor per day; transportation, minimum of TShs. 32,000 per day, depending on the distance; allowances, TShs. 20,000 per day

STEP 6
Demarcation and adjudication
The demarcation of boundaries is carried out during adjudication; neighbors agree on the location and limits of boundaries.

Time: Same 3 days
Cost: Beacons, TShs. 3,500

STEP 7
Licensed Surveyor executes control survey
The new survey is compared and harmonized with previous surveys in order to establish a uniform cadastral information system.

Time: 1 day (high tech equipment)
Cost: Transportation to the field, TShs. 32,000 per day; equipment (GPS), TShs. 180,000 per day, labor, TShs. 30,000 per day; allowances TShs. 20,000 per day

STEP 8
The licensed surveyor executes survey coordination
A scheme of traverses or GPS survey is executed to tie most of the block corner points of the land surveyed to the control framework already established.

Time: 1 day
Cost: Transportation, minimum of TShs. 32,000 per day, depending on distance; equipment total TShs. 45,000 day; labor TShs. 30,000 per surveyor per day; allowance, TShs. 20,000 per day

STEP 9
Block subdivision for plots by the licensed surveyor
In the case of plots set out from TP drawings, individual plots are set out using a tape and iron pins to mark the corners of individual plots.

Time: Same day
Cost: Nil

STEP 10
Detailed survey by the licensed surveyor
All significant developments and natural features that may affect the value and allocation of the parcels, are surveyed and plotted on the map.

Time: Same day, depending on density
Cost: Nil

STEP 11
Data processing and compilation by the licensed surveyor
This involves computation of the survey data, preparation of necessary technical reports, and compilation of the documents in a set format —use computer software, such as Cadpro (250 plots).

Time: 1 day
Cost: TShs. 100,000 per day

STEP 12
The cadastral plan is drawn by the licensed surveyor
A cadastral map is prepared for every survey. This is a graphic record summarizing the survey. It depicts the boundaries surveyed in direction and length as well as all existing details.

Time: Same day - drawing software
Cost: TShs. 60,000 per day

STAGE 3: Survey Approval

STEP 13
Boundaries certificates are signed
The field surveyor signs a Certificate of Erection of Beacons (BC2) and a District Land Officer signs the Certificate of Acceptance of Boundary Beacons (BC1)

Time: 1 day
Cost: Nil

STEP 14
The field notes and the plan is reviewed (green checking) by the licensed surveyor

The field notes and the plan in their official format are examined and reviewed by an experienced land surveyor to ensue that the survey, plan, and the field notes meet all legal and technical requirements.

Time: 1 - 2 days
Cost: Nil

STEP 15
The surveyed plan is submitted to the Director of the Survey and Mapping Division of the Ministry of Lands

Time: 7 days
Cost: Assessment fees, TShs. 5,000

STEP 16 & 17
Survey approved and registered
The survey is approved by the Director of Surveys and Mapping at the Ministry of Lands. The plan is registered by the Director of Surveying and Mapping.

Time: 7 days to one month
Cost: Nil

STEPS 18 through 22
Surveys plan distribution by records office in the Department of Surveying and Mapping
The surveyed plan is sent to:

- Town planning division,
- Registrar of titles
    - Municipality/District Land Division
    - Commissioner for Land
    - Applicant

Time: 10 days
Cost: TShs. 4,000 per copy

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PROCEDURE TO APPLY FOR GRANTED RIGHTS OF OCCUPANCY IN RURAL AREAS

1. REQUIREMENTS

- Land form No 19
- Introductory letter from Ward Executive Officer (WED)
- Approved surveyed plan
- Fees TShs 5,000
- Passport or Birth Certificate/Judicial Affidavit
- Pictures (passport size pictures)

2. APPLICABLE LAWS AND REGULATIONS

- Land Act No 4 and 5 of 1999
- Land Act Regulations (2001)
- Land Registration Ordinance (Cap 344)
- Survey Ordnance Cap 390 (for fixing boundaries and deed plan)
- Town and Country Planning Ordinance (for determining use classes)

3. ENTITIES INVOLVED

- Local Authorities
  - *Kitongoji* Chairperson
  - Ward Executive Officer
- Land Registry
  - Assistant Registrar of Titles
- Minister of Land
  - Commissioner for Lands
    - Land Delivery
    - Legal Office
  - Surveying and Mapping
- District
  - Land Allocation Committee
  - Land Authorized Officer
  - Surveying and Mapping
  - Rent and Record
  - Town Planning Section
  - Treasury
- Applicant/purchaser

4. DESCRIPTION OF THE PROCEDURE

STAGE 1: Preparatory Stage: To obtain pre-requisites to begin the procedure

STEP 1
The applicant obtains a letter from the Ward Executive Officer and sends it to the District Land Officer introducing himself as the real owner of the plot he is applying for.

Time: 1-2 days
Cost: Fees for introductory letter, TShs 5,000; transport for Land Officer; TShs 1,000 to TShs 10,000, depending on the distance

STEP 2
The applicant obtains proofs of citizenship (an affidavit is accepted).

Time: 1 day
Cost: TShs 2,000-5,000, fees for affidavit, TShs 1,000, transport

STEP 3
Applicant obtains an approved surveyed plan of the farmland after the survey has been conducted by the Surveying and Mapping Department at the District.

Time: 1 week
Cost: TShs 5,000 per copy

STEP 4
Applicant obtains form No. 19 from the District Land Officer, fills it in, pays the fees, and attaches the required documents

Time: 1 day
Cost: TShs. 5,000

STEP 5
The received information is filed by the Land Officer and is sent to the Town Planning Section and Valuation unit for assessment.

Time: 14 days
Cost: Nil

STEP 6
A Town Planner at the Town Planning Section approves the land use type (for farming purposes) as well as the conditions of the right of occupancy. If the Town Planners are satisfied, they send it to the Valuation Unit to determine the land rent.

Time: 7 days
Cost: Nil

STEP 7
The Valuation Unit assesses the land, as well as determines the premium and rent to be paid. After the valuation, the file is sent back to the Land Development Section

Time: 7 days
Cost: Nil

STEP 8
The Land Authorized Officer submits the application to the District Land Allocation Committee.

Time: 1 day
Cost: Nil

STEP 9
The land Allocation Committee approves the application

Time: Same day
Cost: Nil

STEP 10
The applicant is informed of the acceptance of his application by the Land Officer through announcements on the notice board

Time: 1 day
Cost: Nil

STEP 11
The Land Authorized Officer prepares a Letter of Offer for the plots/farms to be allocated and gives it to the applicant.

Time: Approximately 2 days
Cost: Nil

STEP 12
The applicant receives the Letter of Offer, fills it in and signs it (acceptance of an offer), and sends it back to the District Land Officer

Time: 1 day
Cost: Fees vary from TShs 60,000 and above for a plot

STEP 13
Land Officer signs the Letter of Offer and gives a copy to the applicant.

Time: 1 day
Cost: Nil

STEP 14
Land Officer prepares Advance Payment Form, which is subsequently given to the applicant who must present it to the Ministry of Lands and pay the amount shown on the form, established by the Valuation Unit.

Time: 1 week
Cost: Transport, TShs 1,000-10,000

STEP 15
Payment of the sum of money as established in the Advance Payment Form translates to the acceptance of the Letter of Offer in treasury.

Time: 1 day
Cost: fees depend on the location of plot and size

STEP 16
The District Land Officer will request the deed plan by using the SF 48 form. The request is made to the Director of Surveys and Mapping in the Land Ministry who will draw and reduce the large survey plan and approve it.

Time: 1-2 weeks

STEP 17
The Director of Surveys and Mapping will send the SF 48 back to the District Land Officer.

Time: 1-7 days
Cost: Nil

STEP 18
The District Land Officer will start preparing the certificate of title.

Time: 1 - 180 days
Cost: Nil

STEP 19
The certificate of title will be signed by the applicant before an advocate.

Time: 1-2 days
Cost: TShs 5,000, advocate fees

STEP 20
The signed certificate of title will be taken back to the District Land Officer by the applicant.

Time: 1 day
Cost: Transport: Varies from TShs 1,000

STEP 21
The District Land Officer prepares a covering letter, enclosing the copies of the Certificate of Right of Occupancy, Advance Payment, and Letter of Offer, and sends it to the Land Commissioner.

Time: Varies 1 - 7 days

STEP 22
The Land Commissioner receives the covering letter and its attachments, signs the Certificate, and send the documents to the Assistant Registrar of Title of that district.

Time: 1 month

STEP 23
The Assistant Registrar of titles registers the Right of Occupancy and issues a Certificate of Titles when the applicant comes to collect them from his office.

Time: 1- 14 days

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PROCEDURE TO REGISTER A MORTGAGE

1. INTRODUCTION

A mortgage (deed pledge) is an interest in property created as a form of security for a loan or payment of a debt, and terminated upon payment of the loan or debt. The borrower (debtor), who offers the security, is the mortgagor. The lender (creditor), who provides the money, is the mortgagee. Virtually any property may be mortgaged except the salaries of public officials. A loan granted on the security of a mortgage of a right of occupancy, or mortgage of a lease, requires approval from the Commissioner for Lands or an Authorized Land Officer, except when it is granted by a prescribed lender (not yet defined). In this procedure, it is assumed that the mortgagor holds a certificate of title. Once a certificate of title is issued, the owner is bound to make payments on an annual basis. For registering mortgages, proof of the aforementioned payment must be presented.

2. APPLICABLE LAWS AND REGULATIONS

- Land Registration Ordinance Chapter 334 (revised)
- The Land Act No. 4 of 1999
- The Land (Amendments) Act
- The Companies Act Cap 212 (for company mortgages)
- Stamp Duty Act cap 189, Revised Editions 2002
- Land regulations

3. ENTITIES/INSTITUTIONS

- The Registrar of Titles (or the Assistant Registrar of Titles)
- Assistant registration Officer
- Cashier
- Commissioner for Lands (or Authorized Land Officers)
- The Chief Government Valuer
- The Municipal Valuers
- Cashier
- The mortgagee/bank/lender
- Mortgagor/applicant/borrower
- Lawyer/advocates
- Registry/front desk

4. REQUIREMENTS

- Certificate of Rights of Occupancy or Letter of Offer if the certificate is not yet issued
- Certificate of Clearance of Tax Payments
- Certificate of Clearance of Rent Payments
- The mortgage application forms, in duplicate
- Copies of ID, passport-size photographs of each party to the transaction.
- Copies of the mortgage agreement
- Valuation report and the receipts for the approval of the valuation report
- Land Rent receipts of that year
- Land form No. 29 (3 copies of transfer forms)
- Land form No. 30 (Consent form)
- The receipt for the payment of the application for consent (TShs: 5,000)
- Proof of citizenship by either birth certificates, passport, or affidavit

5. DESCRIPTION OF THE PROCEDURE

STAGE 1: Preliminary Stage

STEP 1
The applicant/borrower goes to the lender/banker to obtain a loan. The loan officer provides him/her with instructions on how to obtain the loan.

Time: 1 day
Cost: Nil

STEP 2
The applicant/prospective mortgagor studies the necessary information required to gain access to a loan secured by a mortgage.

Time: same day as previous step

STEP 3
The prospective mortgagor obtains all the requirements as prescribed by the loan officer, including a Certificate of Residence and ID from a local authority (local government/village chairperson).

Time: 2 days
Cost: TShs. 1,500 to TShs 10,000

STEP 4
The prospective mortgagor obtains a Clearance of Payment of the land rent for ten years from the Land Ministry, as required by the lender/mortgagee.

Time: 2 days
Cost: TShs 40,000

STEP 5
The prospective mortgagor obtains a Tax Clearance from the Municipality for the last ten years.

Time: 2 days
Cost: TShs. 30,000

STAGE 2: Valuation Report

STEP 6
The application for valuation is submitted at the municipality reception, who opens a file and sends it to the Valuation Section of the corresponding municipality where the land is located. The Office of the Municipal Valuers, who are in charge of valuating mortgages, assesses the file.

Time: 1 day
Cost: Transportation: from TShs 1,000 to 5,000

STEP 7
The Municipal valuers, with at least one assistant valuer, visit the property subject to mortgage in order to assess the value of the land along with any unexhausted improvement.[1]

Time: 1 day
Cost: Transport to the mortgagors residence by the valuers, from TShs 1,000 to TShs 10,000[2]; allowance for the valuers, from TShs 50,000 and up; allowance for assistant valuers, if needed, from TShs 20,000 and up

STEP 8
Drafting of the valuation reports

Time: At least 1 week
Cost: Charges depend on the time valuers require to prepare the report and can cost a minimum of TShs 30,000.

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[1] Banks have their own valuation sections that deal with the valuation of properties to be mortgaged.
[2] Variable depending on the distance. The cost can be higher in the upcountry regions.

STEP 9
The applicant pays the valuation fees at an authorized cashier

Time: 1 day
Cost: Valuation fees, 0.15% of the value of the mortgage; transport, from TShs 1,000 to TShs 10,000

STEP 10
The Municipal Valuer attaches the receipts of the paid fees to the valuation report, and submits the documents to the office of the Chief Government Valuer.

Time: the same day
Cost: Nil

STEP 11
The Chief Government Valuer assesses and approves (stamps and signs) the valuation report.

Time: 2 weeks
Cost: Nil

STEP 12
The applicant collects the approved valuation report from the office of the Chief Government Valuer.

Time: 1 day
Cost: Nil

STEP 13
The mortgagor collects the certified copies of the valuation report from the Municipal Valuation Office.

Time: the same day
Cost: Transportation, TShs 1,000 and above

STAGE 2: Drafting of the Mortgage Agreement

STEP 14
The Mortgagor appoints a lawyer to draft a mortgage deed contract.[3]

Time: 2 - 7 days

[3] For banks, their own lawyers will have already drafted the contract.

Cost: Professional fees for the advocate can vary from TShs 100,000 to TShs 250,000, subject to the agreement between the advocate and the mortgagor.

STEP 15

The parties (mortgagor and mortgagee) sign the copies of the mortgage deed before the advocate.

Time: 1 day
Cost: Transportation, from TShs 10,000 to 50,000

STAGE 3: Preparation of the file for presentation

STEP 16

The advocate prepares a file enclosing the following documents:

- Certificate of the Right of Occupancy, or Letter of Offer if the certificate is not yet issued
- Certificate of Clearance of Property Tax Payments
- Certificate of Clearance of Rent Payments
- The mortgage application forms in duplicate
- Copies of the mortgage agreement
- Valuation Report and the receipts for the approval of the valuation report
- Land Rent Receipts of that year.
- Land Form No. 40
- Proof of citizenship by either birth certificates, passport or affidavit [4]

Time: One week
Cost: Photocopies, from TShs 1,000 to TShs 4,000

STEP 17

The applicant submits the files to the front desk at the Ministry of Lands, if the approval and consent has to be issued by the Commissioner for Lands, or to the District/Municipal Registry, if the Authorized Land Officer gives the consent and approval.

Time: 1 day
Cost: Transportation fees, from TShs 1,000 up

STEP 18

The mortgagor pays the official fees for consent and registrations, as well as stamp duties, at the cashier of the Ministry of Lands or at the corresponding district or

[4] In the event that the mortgagor is a company, the Registrar of Companies must assess the presented documents and issue the Certificate of Registration.

municipality, as directed by the officer who receives and assesses the documents at the front desk.

Time: One day
Cost: Application for consent fees, TShs 5,000; stamp duty, TShs 100; registration fees, TShs 1,000; and transportation

STAGE 4: Consent by the Commissioner for Lands or Authorized Land Officer

STEP 19
The officer from the front desk at the Ministry of Lands or authorized offices submits the file containing the application for consent, along with corresponding requirements, such as receipts, etc.

Time: one day
Cost: transport, from TShs 1,000 to TShs 10,000[5]

STEP 20
After receiving the documents and the receipts, the Commissioner for Lands or an Authorized Land Officer endorses the document and assigns the officer to assess the application and recommend its approval or disapproval.

Time: 1 week
Cost: Nil

STEP 21
The Commissioner for Lands, or Authorized Land Officer, approves the disposition by stamping and signing it.

STEP 22
The Commissioner for Lands/Authorized Land Officer sends a copy back to the front desk where the applicant can collect the copy to send it to the Registrar of Titles or the Assistant Registrar of Titles for registration.

Time: 1 day
Cost: Nil

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[5] Presentation of the copies of the mortgage deed, the certificate of registration from the Registrar of Companies, and the Certificate of Occupancy to the Registrar of Titles

STAGE 5: Registration of the Mortgage Deed

After receiving the documents from the Commissioner or Lands, the Registrar of Titles assesses the document and, if satisfied, registers it.

STEP 23
The documents are received at the Office of the Registrar of Titles and entered in both the counter books and the presentation books

Time: one day
Cost: Transportation, TShs 1000 and above

STEP 24
Assessment of documents by the Registrar of Titles, or the Assistant Registrar of Titles, includes assessment of the following:
- Type of registration
- If stamp duty has been paid
- If registration fees have been paid
- If consent from the Land Officer has been received
- If the name of the registered mortgagor coincides with the records
- Attestation as well as transactions, burdens, and other pertinent rights and interests affecting the property
- Validity of Certificate of Title, if produced
- If the Rights of Occupancy have not expired and other remarks

Time: 2 weeks

STEP 25
After evaluating the documents, the Assistant Registration Officer makes recommendations for its registration.

Time: 1 day
Cost: Nil

STEP 26
The applicant remedies any problems observed and submits a corrected file

Time: from one week to six months
Cost: transportation, TShs 1,000 to TShs 10,000

STEP 27
Registration of the mortgage deed by the Registrar of Titles is approved.

Time: 1 day
Cost: Nil

STEP 28
The mortgagor is issued a copy of the registered mortgage deed and the Certificate of Title is endorsed to show the existence of a mortgage. This certificate will be presented to the bank in order to obtain the loan.

Time: one day
Cost: Transportation, TShs 1,000 and above

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MORTGAGE CLAIMS PROCEDURE

1. INTRODUCTION

To use the judicial system for a mortgage claims is not the usual course to follow. However, it must be used when the necessary legal steps allowing simpler courses of action (such as the drawing up of a power of sale together with a mortgage contract) have not been taken. The procedure described below shows the steps that must be taken by an ordinary citizen for overdue mortgage debts.

Except for in exceptional cases, banks generally do not follow this procedure. It is also important to note that the Court (Land Disputes Settlements) Act 2002 has established a new judicial structure to handle all matters related to lands. This act is currently in the process of being implemented.

2. APPLICABLE LAWS AND REGULATIONS

Tanzania, which happened to be under the British Protection, is using the common law mortgage laws and rules subject to local circumstances. In Tanzania, mortgages are defined and regulated by the following Statutes/Acts and Regulations/Rules:

- The Village Land Act No. 5 of 1999 and its Regulations of 2001 —sections 30 and 31
- The Land Act No. 4 of 1999 and its Regulations of 2001 sections 112, 113, 114, 115 - 132
- The Land Registration on Ordinance (CAP 334) and The Land Registration Rules 1953. Sections 50, 51, 57 - 66
- The Registration of Documents Ordinance and Regulations (CAP 117) - Section 11
- The Chattels Transfer Ordinance (CAP 210)
- The Land (Amendment) Act 2004, sub part 3, Section 124
- The Civil Procedure Code 1966
- The Court Fee Rules GN No. 430 of 2002 (under JALO)
- The Court Brokers and Process servers (Appointments, Remuneration and Discipline) Rules 2000 (Under JALO)
- The Commercial Court (Fees) Rules 1999 G.N No. 275 of 1999 (under JALO)
- Advocates' Remuneration and Taxation of Costs Rules 1991 (under the Advocates Act Cap 341)

3. ENTITIES/INSTITUTIONS INVOLVED

1. The Commissioner of Lands (or Authorized Land Officer)
2. Registrar of Titles (or Assistant Registrar)
3. The court

4. Newspaper
5. Advocate
6. Debtor/borrower/defendant
7. Creditor/lender/plaintiff

4. DESCRIPTION OF THE PROCEDURE

STAGE 1: Demand Notice for Payment (1 month)

STEP 1
Preparing the notice
Lawyers are still using the old common law of notification to the borrower. This notification is usually prepared by big companies, such as banks. For local individuals, the methods used are either a communication through the local authorities of the village/*mtaa* they belong to, or a publication in the local newspaper.

The plaintiff (mortgagee) hires an advocate who prepares a letter demanding payment, and gives 30 days from the date of receipt of the letter to remit payment.

Time**:** 1 day
Cost**:** Attorney fees, TShs 150,000; stationery, including secretarial charges, TShs 20,000; others (transport for the plaintiff to the advocate (private transport) TShs 10,000; public transport TShs 1,000

STEP 2
Reception of the notice[1]
The defaulting debtor is notified by publications in the local newspapers (e.g. *The Guardian* and *Majira*). This notice is usually published in 2 daily newspapers.

Time**:** 1 day
Cost**:** Newspaper fees, from TShs 42,000 to TShs 84,000; stationery: TShs 4,000; other: postal services (e.g. expedited mail services - EMS) TShs 8,100

STEP 3
Failure of payment is confirmed
The mortgagee confirms that 30 days have passed and that no payment has been made.

Time: 1 day after 30 days have elapsed
Cost**:** Nil

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[1] It is enough to send notices through the postal services. If evidence must be produced that a postal packet was received by the borrower, then the plaintiff must produce a certificate from an Officer of the Court showing that the Postal Packet contained the Demand Notice, or a letter or other document, such as the Demand Notice itself, acknowledging or indicating that the demand notice has been received.

STAGE 2: The Plaintiff Sues the Borrower

The pecuniary value of the subject matter in dispute determines if such a person goes directly to the District Court or to another court to file the suit. The highest-level court for mortgage claims is the Land Division of the High Court. For appeals, one must go up to the Court of Appeals. **Depending on the amount, one would file the case at the Resident Magistrate's Court or the District Land and Housing Tribunal. This is under the new law, which has yet to be implemented.**

STEP 4

Under Order VII of the Civil Procedure Code, the mortgagee's lawyer prepares a plaint specifying the intention to sue the borrower.

Time**:** 1 day

Cost**:** Photocopies (4 copies), TShs 1,500; stationery, TShs 2,000; advocate's fee, 3 % - 10 % of the value of the subject matter; others, advocate's transport, public TShs 1,000, private, TShs 10,000 (subject to the Advocates Remuneration Regulations)

STEP 5

Filing of the documents

The mortgagee brings the case to the court. The advocate for the plaintiff/mortgagee files the previously drafted plaint, (chamber summons supported by an affidavit, if any) under the summary procedure.[2.] If the pecuniary amount claimed is from TShs 5 million to TShs 40 million, the plaint must be presented to the District or Resident Magistrate Court (The District Land and Housing Tribunal). Land dispute cases that have a pecuniary value of more than TShs 40 million are heard in the Land Division of the High Court.[3]

Time: 1 day

Cost: photocopies, TShs 2,000; stationery (typing and printing), TShs 4,000; fees, (Plaint and Annexes) TShs 16,000 (the price of a plaint is TShs 1,500. The amount for annexes is assessed by the Registry Officer before payment is made).

STEP 6

Summons/appearance to the court

A summons to appear in court is issued to the defaulting borrower where he/she has to show cause why a summary judgment should not be entered. The service of summons is made by delivering a copy, signed by the judge or magistrate or Officer appointed by the Court, and sealed with the seal of the Court. Such a summons must be accompanied

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[2] Order XXXV of the Civil Procedure Code, rule 1

[3] If the amount is more than TShs 40 million, claims must be filed at the Land Division of the High Court.

with a copy of the plaint filed by the lender/mortgagee, and must specify the time for appearance.

Time: 1 - 21 days
Cost: if substituted by service in newspapers, TShs 84,000; postal costs, depend on the type of service used, expedited mail services, TShs 8,100; registered postal service, TShs 3,000; by hand, through court officers, TShs 5,000

STAGE 3: Hearings And Decrees (1 to 3 years)

STEP 7
The first day in Court (after going through the pleadings, where permitted, and ADR, and PTC) both parties appear. The court may postpone any proceedings until the plaintiff/mortgagee has exhausted all evidence (rights or claims) against the mortgaged land (land given as security). The borrower may request additional time to prepare any written statements of defense or counter affidavits.

Time**:** 1 day
Cost**:** Transport for the lender, if public, TShs 1,000, if private, TShs 10,000

STEP 8
Hearings (from 6 months to 3 years)
Each party must bring their witnesses and evidence. The judge or the presiding officer and the parties should agree to an appropriate time for another hearing when adjournments are necessary. The time between one hearing and the next is generally one month. The number of hearings depends on how the parties have tendered their evidences. Usually, a minimum of 5 hearings are held.

Time**:** 6 months to 3 years
Cost**:** photocopies, TShs 2,000; stationery, TShs 4,000; fees (for filing defenses) TShs 1,500 each + annexes = total TShs 4,500; transportation for the lender: if public transport, TShs 1,000, if private transport TShs 10,000

STEP 9 (after hearings are completed)
Preliminary Decree to be delivered in Open Court
If the plaintiff wins the case, the court shall pass a decree ordering an account to be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for the costs of the suit, if any.

Time: 1 day
Cost: photocopies, TShs 1,500; stationery, TShs 2,000; transportation for the lender, public TShs 1,000, if private, TShs 10,000

STEP 10

Application for a final decree

The application can be completed in the following steps: An oral application for the payment of money, as ordered by the court, for the immediate execution or sale of the mortgaged property. A written application containing the date of the decree, the amount of cost to be awarded, and the type of assistance required of the court in selling the mortgaged property.

Time: 1 day

Cost: photocopies, TShs 1,500; stationery, TShs 2,000; fees (application fees), TShs 1,000; transport for the lender's advocate, if private transport, TShs 10,000; if public transport, TShs 1,000

STEP 11

Final decree

A decree is passed ordering the sale of the mortgaged property. The proceedings will be disposed of by serving a notice of sale to the defaulting debtor.

Time: 1 day

Cost: photocopies, TShs 2,000; stationery, TShs 3,000

STEP 12

Notice of the Final Decree

The plaintiff/mortgagee is notified that he/she is entitled to exercise the power of sale by public or private auction for a purchase payable in a lump sum or by installments.

Time: Same day

Cost: photocopies, TShs 500; stationery; TShs 1,500

STEP 13

Notice to Exercise Remedies

The plaintiff/mortgagee's lawyer prepares and serves a notice to sell in a prescribed form (form required by law) in order to give the debtor (borrower) his right of redemption. The borrower is given a period of 30 days from the day the notice is received (Land Act 2004) to pay.

Time: 2 days

Cost: photocopies, TShs 3,000; stationery, TShs 4,000; fees for publication in newspapers, TShs 84,000; lenders' transport to the newspaper's office, if public transport, TShs 1,000, if private transport TShs 10,000

STAGE 4: Execution of Remedies and Payment of the Amounts Due (1 to 3 Months)

STEP 14

Order to enter in possession (One remedy)

Once the thirty days stipulated in the notice from step 13 have elapsed, the courts issue an order allowing the plaintiff to enter into possession of the mortgaged land.[4]

Time**:** 1 day

Cost: photocopies, TShs 1,000; stationery, TShs 4,000

STEP 15

Appointment of the Receiver (an alternative remedy, which is optional but does not exclude the alternative being used)

The appointment of the receiver must be in writing and signed by the mortgagee. A receiver should be designated to be the mortgagor's agent for the power of sale of the mortgaged land. These appointments are usually made after the 30 days mentioned earlier have elapsed.

Time 1 day

Cost: photocopies; TShs 1,000; stationery; TShs 2,000; fees, advertisement in 2 newspapers, TShs 84,000; ordinary port or expedited mail services, from TShs 3,000 to TShs 8,100

STEP 16

Advertisement to sell the mortgaged property

When the sale is to proceed by public auction, the mortgagee's lawyer must ensure that the sale is publicly advertised and in a manner that will attract persons likely to be interested in bidding on the mortgaged land.

Time: 1 day

Cost: photocopies, TShs 3,000; stationery, TShs 10,000; fees for newspapers, TShs 84,000

STEP 17

Registrar acceptance

The Registrar accepts the advertising as sufficient evidence that the power of sale is being exercised.

[4] This step is taken at the option of the mortgagee generally, and compulsorily when the mortgagor is not compliant or the property is one listed under **section 130 (5) of the Land Act** (i.e. property that requires court orders in order to enter into possession).

Time: 1 day
Cost: photocopies, TShs 1,000; stationery, TShs 2,000

STEP 18
Service of Notice of Sale
A mortgagee has the power to sell the mortgaged property only after the advocate of the decree holder/mortgagee has notified the following people: [5]

- An authorized land officer in the area where the mortgaged land is held
- Any spouse(s) of the borrower
- Any lessee or sub-lessee of the mortgaged land or of any building on the mortgaged land
- The holder of the right of occupancy from which the lessee has been granted
- Any other creditors
- Any other guarantor
- Any other person with a right to enter on and use the land or the natural resources in, on, or under the mortgaged land
- Any person who is a co-occupier with the borrower

Time: Minimum 1 week
Cost: photocopies, TShs 18,000; stationery, TShs 30,000; postal charges, TShs 40,000

STEP 19
Execution of the Power of Sale
The mortgagee exercises the Power of Sale and discharges of the mortgage.

Time: 1 day
Cost: photocopies, TShs 1,500; stationery, TShs 3,000; fees for the Local Government where the sale is taking place, i.e. Municipal Council, TShs 40,000

STEP 20
Payment of the Required Taxes and Costs
The mortgagee uses the purchase money received from selling the mortgaged property in the following order:
- First, in payment of any rates, rents, taxes, charges or other sums owing and required to be paid on the mortgaged land.
- Second, in discharge of any prior mortgage or other encumbrance for which the sale was made.
- Third, in payment of all costs and reasonable expenses properly incurred and incidental to the sale or any attempted sale.

[5] More details are given in Section 133 (1) (2) (3) of the Land (Amendment) Act of 2004

- Fourth, in discharge of the sum advanced under the mortgage or the remains outstanding, interest, cost and all other moneys due under the mortgage.
- Fifth, in payment of any subsequent mortgages, in order of their priority.

Time**:** 2 days
Cost: photocopies, TShs 10,000; stationary, TShs 20,000; fees (minimum), TShs 30,000

STEP 21
Payment of Professional Fees (The last payment after the first has been paid in the preliminary stages mentioned in Step 4)
The advocate for the lender receives his/her professional fees, in accordance with the agreement with the lender.

Time**:** Same day
Cost: photocopies, TShs 2,000; stationery, TShs 4,000 Professional Fees (depending on the agreement)

STAGE 5: Registration and Approval of the Purchased Mortgaged Land (1 to 3 Months)[6]

The purchase of the property must be approved by the Commissioner for Lands in order to give the new purchaser certificate of title of the mortgaged property. This approval takes place when notification documents and the request for approval are delivered to the Commissioner.

STEP 22
Application for the Transfer of the Right of Occupancy
The purchaser must present the documents of title to the Ministry of Land. These documents are the Court Decree, receipt for the amount paid, and memorandum of sale of the granted right of occupancy. Registration is compulsory for the purchaser to fully exercise his/her rights of occupancy.

Time**:** 1 day within the month that the mortgaged land was purchased
Cost: stationary (memorandum of sale), TShs 10,000; photocopies, TShs 2,000; transport, if public, TShs 1,000, if private, TShs 10,000; lawyer's fee, TShs 150,000

STEP 23
Delivery of Documents to the Commissioner
The purchaser must send or deliver a notification in the required format to the Commissioner for Lands, or an Authorized Land Officer. The purchaser must submit the receipts of payments of all premier taxes and dues, along with the documents for the approval of that disposition.

[6] This stage is to be completed by the buyer of the mortgaged property.

In accordance with Section 39 of the Land Act, the purchaser is required to use Land Forms No. 29 (Notification of a Disposition) and No. 30 (Application for Approval of Disposition) as well as submit the Transfer of a Right of Occupancy Form, along with the certificate of Title for approval and consent.

Time: 1 day within the above month
Cost: Transport for the Purchaser: if public, TShs 5,000, if private, TShs 10,000; fees, (application fees), TShs 7,000

STEP 24
Registration of Transfer
The Registrar is required to register the transfer on the date when the documents for transfer of right of occupancy are delivered. Thereafter, the transfer cannot be challenged for reason of default.

Time: 1-2 Weeks
Cost: registration fees for Land Forms No. 29 and 30, stationery, TShs 4,000; photocopies, TShs 1,000

STEP 25
Transfer and Receiving of New Certificate of Title
Every transfer after registration vests the mortgaged estate in the purchaser, free and clear from all liability on account of such mortgage or of any other encumbrance registered or entered. The new certificate of title is under the name of the purchaser.

Time**:** 1 day within the above 2 weeks
Cost: transport for the purchaser to the Commissioner's office, if public transport, TShs 1,000, if private, TShs 10,000

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PROCEDURE TO ATTACH UNREGISTERED PROPERTIES

1. INTRODUCTION

The High Court has ruled that an attachment may be made only after a hearing before a judge/magistrate in which both sides can argue the danger that the party being sued (defendant) is likely to leave the area or otherwise avoid probable payment. However, a temporary attachment may be allowed by court order with the absence of the other party based on the creditor's declaration that there is clear proof that the defendant is going to flee. In this case, the court stipulates that the creditor pay a bond to cover possible damages to the defendant if the attachment proves to have been unnecessary.

The objective of this procedure is to show how a creditor can attach a debtor's unregistered properties for payment of money owed or in fulfillment of any obligation. It is important to note that approximately 90% of the land in Tanzania is not registered.

2. APPLICABLE LAWS AND REGULATIONS

- Land Act No. 4 of 1999
- Civil Procedure Code Order XXI Rule 40
- Village land Act No. 5 of 1999
- The Court Brokers and Process Servers (appointment remuneration and discipline) Rules 2000 GN 299 of 2000 (under JALO)

3. ENTITIES/INSTITUTIONS INVOLVED

- Lawyer/Advocate
- Village authorities
  - Village councils
  - Village chairman
- Ward executive officer
- Courts
  - Magistrate
  - Court brokers
- Authorized witnesses
- Neighbor (can be the same persons)
- Plaintiff - decree-holder
- Defendant - judgment-debtor

4. DESCRIPTION OF THE PROCEDURE

STAGE 1: Court examination of the debts owed[1]

STEP 1
The creditor applies to the court in order to have the debt owed and the property that belongs to the borrower examined [2]

Time: 1 day
Cost: Application fee, TShs 1,500; lawyers fee, 3% - 10%; stationary and photocopies, TShs 3,000

STEP 2
The court orders attendance and the examination of the debtor. He/she must produce documents to verify the location of the property (in this case, the unregistered land).

Time: 1 day (at least the same week when receiving the applications)
Cost: Notice from the court, if placed in court notice board, TShs 1,000, if sent to the defendant himself, TShs 5,000; transport, TShs 1,000 to TShs 5,000

STEP 3
The debtor provides documents to prove the location of the unregistered land.[3]

Time: The attendance is usually 14 days after the notice has been issued
Cost: Transport for the parties, TShs 10,000 to TShs 20,000; stationary and photocopies, TShs 3,000

STEP 4a
The court gives order to the court broker too carry out the valuation of the property and report to the court for further process.

Time: 1day
Cost; Nil

STEP 4b
The court brokers visit the site where the property is located (parcel of land/plot) — whether in rural or urban areas— in order to identify the plot and evaluate its value. [4]

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[1] The aim is to determine whether any or what debts are owed by the alleged debtor and if so, whether he/she has any property which could satisfy the debt

[2] The creditor will need to engage an advocate to draft the applications. It is advisable although not mandatory

[3] This is necessary in order to enable the court brokers to trace its location and attach the land to sell it for the recovery of the debt claimed by the creditor.

Time: Maximum 1-2 weeks
Cost: Transportation, TShs 10,000 to TShs 50,000

STEP 5
Meetings with the local leaders (e.g. village council or village chairperson) in order to confirm whether the debtor is the real owner of the unregistered plot/land. The meetings may be attended by the court officer, the creditor, and the court broker (who is the seller).[5]

Time: 1 day
Cost: Village council, if involved, may request an allowance of TShs 5,000 per member, which could amount to TShs 50,000, stationary and photocopies, TShs 2,000

STEP 6
Once ownership of land is confirmed by the broker, the court issues an attachment warrant, prohibiting debtor to transfer of further burden the property.

Time: 1 day
Cost: Nil

STEP 7
The court promulgates the decree ordering the sale (issues the Sale Warrant) of the attached property in a public auction.

Time: At least one month after the date of attachment notice
Cost: Issuing notice in advertisement, TShs 84,000

STEP 8
Preparation of proclamation, which states the time, place, price, and mode of payment. This is only prepared after the notice to the creditor and the debtor has been sent by the broker.[6]

Time: 2 days
Cost: If drawn up by a lawyer/advocate, TShs 50,000 and above; stationary and photocopies, TShs 3,000

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[4] If the land is in a village area, they have to see the village council in order to confirm the location and the owner of the property to be attached

[5] Any attached land must be offered to villagers first. If no villagers are interested, it may be sold to others after village council consent has been obtained, in accordance with the Land Act.

[6] Usually the sale and price of the property is published together with the notice of sell by the property

STEP 9a

Sale of the property (Execution of Sale Warrant). The auctioneer sells the property in the open market by taking the highest bid. The winning bidder is required to pay 25% as a deposit of the total amount on the date of auction.

Time: 1 day
Cost: Transport to the place where the land is located, approximately TShs 30,000; fee to the village council, 10%;[7] stationary and photocopies, TShs 3,000

STEP 9b

The bidder pays the remaining sum and takes possession of the property.
Time: Within 15 days
Cost: transport TShs 10,000

STAGE 2: Payment to the creditor: The creditor is required to receive 1/4 of the price of the sale on the date of auction and 3/4 from the purchaser before the 15th day after the sale of the property. If the purchaser defaults, the property will be sold again.

STEP 10

The creditor receives the money from the sale of the property as confirmed by the court.

Time: 1 week
Cost: Stationary, TShs 3,000; advocate's professional fee, 10% of the value of the property sold

STAGE 3: Transfer and registration of the land. The purchaser must register the land he/she has purchased and obtain the certificate of title. This procedure includes surveying of the piece of land, obtaining a letter of offer, and obtaining a Certificate of Title. (See procedure for surveying land and registering property rights.)

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[7] There are at least three laws which can hinder attachments. The first is Section 48 of the Civil Procedures Code, which provides that agricultural land used by an individual whose livelihood is wholly dependant on such land and residential accommodation occupied by a judgment debtor, his wife and dependant children is not liable for attachment and sale in execution of a decree of accord. The second is Section 115 of the Land (Amendment) Act, which states that the mortgagor, under a customary mortgage, may after making use of the service of the Village Land Council try to mediate on the matter with the mortgagee, apply to a Village Land Council for the mortgage to be reopened on the grounds that the terms of the mortgage are: unfair, an unreasonable departure from the normal terms of a customary mortgage applicable in the area where the land is located, or disadvantageous to the interests of the dependents of the mortgagor. The third is Section 31 of the Village Land Act, which establishes that a disposition of a derivative right shall require the approval of the Village Council having jurisdiction over the village land. These three laws alone could affect up to 10% of the value of the property.

PROCEDURES FOR MORTGAGE CLAIMS
Debt Recovery by Exercising a Power of Sale

1. INTRODUCTION

This sequence describes the procedure commonly used by banks and legal offices to recover a debt secured with immovable property.

In practice, when the mortgagor defaults in the repayment of the loan within the agreed period, banks serve them with notices of 30 days as required by the new law. Notices are sent by registered mail to the defaulters. Then if not paid banks appoint auctioneer to sell the property, who in turn gives a notice of 14 days, or appoint a receiver who will serve the notice of 21 days. However, people have resorted to obtaining a court injunction to stop the sale of the property in accordance with the mortgage deed. Moreover, this is such a common practice that one of the leading banks has approximately 400 cases of mortgage defaults pending throughout the country.[1] Resolving these cases becomes very expensive since they can take 5-6 years to complete.

The sequence described below does not include an injunction order.

2. APPLICABLE LAWS AND REGULATIONS

- Land Registration Ordinance Cap 334 Sections 58, 63
- The Registration of Documents Act Cap 117. Sections 11
- The Land (Amendment) Act. 2004.
- Civil Procedure Code Act, 1966
- The Courts (Land Disputes Settlements) Act, 2002, No. 2 of 2002
- The Court Fees Rules, GN#430 of 2002 (Under JALO)
- The Court Brokers and Process Servers (Appointments, Remuneration and discipline) Rules 2000, GN# 299 of 2000 (under JALO)
- Advocates' Remuneration and Taxation of Costs Rules 1991, GN#515 of 1991 (Under The Advocates Act, Cap. 341 RE)

3. ENTITIES/INSTITUTIONS INVOLVED

- Commissioner for Lands or authorized officer
- Registrar of Titles or Assistant Registrar
- Court (optional)
- Newspaper
- Purchaser

[1] This information was kindly provided by the CRDB Bank.

- Third interested parties
- Mortgagor and advocate
- Mortgagee and advocate

4. DETAILED SEQUENCE OF THE PROCEDURE

STAGE 1: Demand Notice for Payment (33 days, average)

STEP 1
Preparing the notice
The lawyers are still using the old common law of notification to the borrower. Big companies, such as banks, usually prepare this notification. For local individuals, the methods used are either a communication through the local authorities of the village/*mtaa* they belong to, or a publication in the local newspaper.

The plaintiff/mortgagee hires an advocate who prepares a letter demanding payment, and gives 30 days from the date of receipt of the letter to remit payment.

Time: 1 day
Cost: Attorney fees, TShs 150,000; stationery: including secretarial charges, TShs 20,000; others: transport for the plaintiff to the advocate, if private transport, TShs 10,000; if public transport, TShs 3,000

STEP 2
Reception of the Notice[2]
The debtor/borrower is notified by publications in the local newspapers (e.g. *The Guardian* and *Majira*). This notice is usually published in 2 daily newspapers.

Time**:** 1 day
Cost: newspaper fees, TShs 84,000; stationery, TShs 4,000; others: postal services (e.g. Expedited Mail Services - EMS, TShs 8,100

STEP 3
Failure of Payment is Confirmed
The plaintiff/mortgagee confirms that 30 days have passed and no payment has been made.

Time: 31 days (1 day after 30 days have elapsed)
Cost**:** No Cost

[2] It is enough to send notices through the postal services. If evidence must be produced that a postal packet was received by the borrower, then a certificate of an Officer of the Court that the Postal Packet contained the Demand Notice, or a letter or other document, such as the Demand Notice itself, must be produced acknowledging or indicating that the demand notice has been received.

STAGE 2: Execution of Remedies and Payment of the Amounts Due (14 days to 3 Months)

STEP 4

Order to Enter in Possession (optional)

Once the thirty days stipulated in the notice from Step 1 have elapsed, the courts issue an order allowing the plaintiff to enter into possession of the mortgaged land.[3]

Time**:** 1 day

Cost: photocopies, TShs 1,000; stationery, TShs 4,000

STEP 5

Appointment of the Receiver

The appointment of the receiver must be in writing and signed by the mortgagee. A receiver should be designated to be the agent of the mortgagor for the power of sale of the mortgaged land. This appointment is generally made after the aforementioned 30 days have elapsed.

Time**:** 1 day

Cost: photocopies, TShs 1,000; stationery, TShs 2,000; fees. advertisements in 2 newspapers, TShs 84,000; post or expedited mail services, TShs 8,100

STEP 6

Advertisement to sell the mortgaged property

When the sale is to proceed by public auction, the plaintiff/mortgagee's lawyer must ensure that the sale is publicly advertised and in a manner that it will attract persons likely to be interested in bidding on the mortgaged land.

Time**:** 1 day

Cost: photocopies, TShs 3,000; stationery, TShs 10,000; fees for newspaper ads, TShs 84,000

STEP 7

Registrar Acceptance

The Registrar shall accept the advertising as sufficient evidence that the power of sale is being exercised.

Time**:** 1 day

Cost: Photocopies, TShs 1,000; stationery, TShs 2,000

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[3] This step is taken at the option of the mortgagee generally, and compulsorily when the mortgagor is not compliant or the property is one listed under **section 130 (5) of the Land Act** (i.e. property that requires court orders in order to enter into possession).

STEP 8

Service of Notice of Sale

A plaintiff/mortgagee has the power to sell the mortgaged property only after the advocate, on behalf of the decree holder/mortgagee, notifies the following people: [4]

- An authorized land officer in the area where the mortgaged land is held
- Any spouse(s) of the borrower
- Any lessee or sub-lessee of the mortgaged land or of any building on the mortgaged land
- The holder of the right of occupancy from which the lessee has been granted
- Any other creditors
- Any other guarantors
- Any other person with a right to enter on and use the land or the natural resources in, on, or under the mortgaged land
- Any person who is a co-occupier with the borrower

Time**:** Minimum 1 week

Cost: photocopies, TShs 18,000; stationery, TShs 30,000; postal charges, TShs 40,000

STEP 9

Execution of power to sell

The mortgagee exercises his Power of Sale and discharges of the mortgage.

Time: 1 day

Cost: photocopies, TShs 1,500; stationery, TShs 3,000; fees for the Local Government where the sale is taking place, i.e. Municipal Council, TShs 40,000

STEP 10

Payment of the Required Taxes and Costs

The mortgagee uses the purchase money received from selling the mortgaged property in the following order:

- First, in payment of any rates, rents, taxes, charges or other sums owing and required to be paid on the mortgaged land.
- Second, in discharge of any prior mortgage or other encumbrance for which the sale was made.
- Third, in payment of all costs and reasonable expenses properly incurred and incidental to the sale or any attempted sale.
- Fourth, in discharge of the sum advanced under the mortgage or the remains outstanding, interest, cost and all other moneys due under the mortgage.
- Fifth, in payment of any subsequent mortgages, in order of their priority.

[4] Section 133 (1) (2) (3) of the Land (Amendment) Act of 2004

Time**:** 2 days
Cost: photocopies, TShs 10,000; stationary, TShs 20,000; fees (minimum), TShs 30,000

STEP 11
Payment of Professional Fees (The last payment after the first has been paid in the preliminary stages mentioned in Step 10)
The advocate for the lender receives his/her professional fees, in accordance with the agreement with the lender.

Time**:** Same day
Cost: photocopies, TShs 2,000; stationery, TShs 4,000 professional fees (depending on the agreement)

STAGE 3: Registration and Approval of the Purchased Mortgaged Land (1 to 3 Months) [5]

The purchase of the property must be approved by the Commissioner for Lands in order to give the new purchaser certificate of title of the mortgaged property. This approval takes place when notification documents and the request for approval are delivered to the Commissioner.

STEP 12
Application for the Transfer of the Right of Occupancy
The purchaser must present the documents of title to the Ministry of Land. These documents are the Court Decree, receipt for the amount paid, and memorandum of sale of the granted right of occupancy. Registration is compulsory for the purchaser to fully exercise his/her rights of occupancy.

Time**:** 1 day within the month that the mortgaged land was purchased
Cost: stationary (memorandum of sale) TShs 10,000; photocopies TShs 2,000; transport, if public, TShs 3,000, if private, TShs 10,000; lawyer's fee, TShs 150,000

STEP 13
Delivery of Documents to the Commissioner
The purchaser must send or deliver a notification in the required format to the Commissioner for Lands, or an Authorized Land Officer. The purchaser must submit the receipts of payments of all premier taxes and dues, along with the documents for the approval of that disposition.

In accordance with Section 39 of the Land Act, the purchaser is required to use Land Forms No. 29 (Notification of a Disposition) and No. 30 (Application for Approval of

[5] This stage is to be completed by the buyer of the mortgaged property.

Disposition) as well as submit the Transfer of a Right of Occupancy Form, along with the certificate of Title for approval and consent.

Time**:** 1 day within the above month
Cost: transport for the purchaser: if public transport, TShs 5,000, if private transport, TShs 10,000; application fees, TShs 7,000

STEP 14
Registration of Transfer
The Registrar is required to register the transfer on the date when the documents for transfer of right of occupancy are delivered. Thereafter, the transfer cannot be challenged for reason of default.

Time: 1-2 Weeks
Cost: registration fees for Land Forms No. 29 and 30: stationery, TShs 4,000; photocopies TShs 1,000

STEP 15
Transfer and Receiving of New Certificate of Title
Every transfer after registration vests the mortgaged estate in the purchaser, free and clear from all liability on account of such mortgage or of any other encumbrance registered or entered. The new certificate of title is under the name of the purchaser.

Time**:** 1 day within the above 2 weeks
Cost: transport for the purchaser to the Land Commissioner’s office: if public transport, TShs 3,000, and if private transport, TShs 10,000

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PROCEDURE FOR ESTATE ADMINISTRATION (INTESTATE)

This procedure is concerned with the inheritance of property when the deceased died intestate. The procedure is comprised of two separate stages: Stage I, registering a death certificate, and Stage II, obtaining a letter of administration.

STAGE I
PROCEDURE TO REGISTER A DEATH CERTIFICATE

1. INTRODUCTION

The procedure to register a death certificate is governed by the “Births and Deaths Registration Ordinance Cap 108” of the laws of Tanzania. This law is currently being amended to facilitate the registration of deaths.

The majority of Tanzanian citizens are unaware of the need to register a death certificate, and only become aware of its importance when a matter of inheritance arises, or when the court requires a death certificate in a matrimonial case. The procedure may take from 1 week to 4 months if a citizen encounters difficulties in proving the death.

2. APPLICABLE LAWS AND REGULATIONS

- The Births and Deaths Registration Ordinance (Cap 108), Act No. 1 of 1993, revised edition 2002

3. ENTITIES/INSTITUTIONS INVOLVED

- The Registrar-General
- District Registrar
- Certified medical doctor
- Deceased
- Ward Executive Officer/Chairman

4. DESCRIPTION OF THE PROCEDURE

STEP 1
The relatives of the deceased submit the burial license obtained from the hospital.[1]

[1]Note: When the death of a person occurs in a hospital or dispensary, the relatives of the deceased must ensure that they do not leave the hospital compound without being given a burial license. This document is very important before registering a death and is provided free of charge. If a person dies in his/her home, their relatives should contact the village executive officer or any nearby local government office to

Time: 1 day (if possible the same day, but before 30 days have elapsed)
Cost: Transportation; minimum TShs 4,000

STEP 2
The District Registrar registers the death, which took place within the district.

Time: The same day
Cost: Registration fees for a death taking place less than 30 days before the date of application, TShs 3,500; fees for a death taking place more than 30 days before the date of application, TShs 4,000

STEP 3
The applicants describe particulars and attest to their correctness by signing.

Time: The same day
Cost: Already paid in step 2

STEP 4
The District Registrar sends the documents received to the office of the Registrar-General. These can be sent through the regular post.

Time: Up to 1 month
Cost: Postal charges, TShs 8,100

STEP 5
The Registrar-General corrects any errors. He signs and dates any correction made.

Time: 1 week
Cost: Nil

STEP 6
The Registrar-General furnishes the death certificate form to the District Registrar, who, in turn, will issue it to the relatives of the deceased.

Time: Within 1 month
Cost: Postal charges, TShs 8,100

STEP 7
The relatives collect the certified copy of the death certificate

Time: up to 2 months
Cost: Transportation, a minimum of 6 visits, TShs 10,000

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obtain written notice as proof of death of the person. In both cases, Form No. BD 6 must be filed for the application of death registration.

STAGE II
STATUTORY APPLICATION

1. INTRODUCTION

The application for inheritance of properties is governed by the Probate and Administration of Estates Act Cap 352, Revised Edition of 2002 (both principal and subsidiary regulations). In Tanzania, most family cases are about probate and the administration of estates. The law requires equality in property ownership among families. This procedure is concerned with the inheritance of property when the deceased died intestate, which is common since the majority of Tanzanians are unaware of the importance of drafting and registering their wills.

2. APPLICABLE LAWS AND REGULATIONS

- The Probate and Administration of Estates Act Cap 352. Revised edition 2002
- Succession Act of India 1865
- The Law of Marriage Act 1971
- Succession (Non-Christian Asiatics) Ordinance, Cap 112
- The Administration (Small Estates) Ordinance, Cap. 30
- The Magistrate’s Courts Act 1984
- The Mohamedan Estates [Benevolent Payments] Ordinance, Cap. 20
- Restatement of Islamic Law, Gn# 22 Of 1967
- The Wakf Commissioners Ordinance, Cap 109
- The Judicature and Application of Laws Ordinance, Cap. 453 [Jalo] - Re Cap 358
- Indian Hindu Wills Act 1870, as applied to Tanzania
- The Administrator General’s Ordinance, Cap 27
- Local Customary Law [Declaration] [No. 4] Order 1963, Gn #436 Of 1963
- Local Customary Law [Declaration] Order, 1963 [Law Of Persons] Gn# 279 Of 1963

3. ENTITIES/INSTITUTIONS INVOLVED

- Petitioner: The person applying for grant of probate or letters of administration
- Registrar or district delegate
- Administrator: The person whose letters of administration are granted with respect to the deceased person’s estate.
- Beneficiaries/heirs of the deceased
- Magistrate or judge of the court
- Newspaper

4. DESCRIPTION OF THE PROCEDURE

STEP 8A

The family of the deceased meets to discuss and propose who will be the administrator of the deceased's estate. [2] The family keeps the minutes of the meeting and encloses them together with the name of the proposed administrator to be used when applying for grants of the letters of administration.

Time: 3 days (minimum)
Cost: family meetings (food + drink), TShs 30,000; stationary and photocopies, TShs 4,000

STEP 9

One of the family members (wife who wishes to inherit) must fill out form No. 27 (petition for Letters of Administration when the deceased died intestate).[3] Family members are advised to hire advocates. However, they can only hire an advocate if the matter is not taken to the Primary Courts given that the use of advocates is not allowed in Primary Courts.

Time: 2 days minimum
Cost: photocopies (of Form No. 27), TShs 1,000; transport, TShs 4,500; professional fees, TShs 50,000

STEP 10

The advocate, if any, or the petitioner, attaches the Certificate of Death, minutes of the meeting, the proposed name of the administrator, and the affidavit to form No. 4 (chamber summons) and files all these documents with the court.

Time: 1 day
Cost: transport to the court, TShs 4,500; professional fee for the advocate (generally for drawing up the petition), TShs 10,000; fees for filing (TShs 1500 x Annexes), TShs 4,500

STEP 11

The probate and administration petition is filed. It can take two weeks before a case number is assigned.[4] The court will use Form No. 1

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[2] In a meeting of this kind, it may take at least 2 to 3 days for the family to reach a final decision. The duty of the person chosen as the administrator is to administer the property of the deceased person for the heirs or beneficiaries. However, he shall not benefit from the property in any way himself. In some parts of the country such procedures are mostly ignored, that is to say, that the relatives of the deceased may sell all the properties and leave the widow with nothing.

[3] The form must be filled out by the wife or a related person. It must state who is legally required to inherit the property or assets of the deceased, if the deceased died intestate, and his nationality

[4] Some informants indicated that this delay is due to the negligence of court officers.

Time: 2 to 3 days (but it can be up to 2 weeks)
Cost: Waiting cost

STEP 12
The court where the petition was filed issues the Notice of Application. The court will use Form No. 5[5]

Time: 1 day[6]
Cost: Substituted service in newspapers (42,000 per publication x 2), TShs 84,000; transport to the newspapers office, TShs 4,500

STEP 13
For this first court appearance date, all parties should appear before the magistrate, as stated in the Notice of Application. The magistrate requires items of proof. If possible, the matter can be settled during this hearing, pending judgment. Otherwise, another hearing is scheduled.

Time: 1 day (if settled during this first hearing)
Cost: Transport for the parties to the court, TShs 5,000; stationary and photocopies, TShs 2,000

STEP 14
The judgment day. The magistrate or judge upon hearing the parties shall issue the grant of letters of administration to the petitioner.

Time: 1 day (usually, the time between one hearing and the next, the ruling day, is **1 month**)
Cost: photocopies, TShs 2,000; transportation, minimum TShs 5,000

STEP 15
Within six months after the letter of administration is issued, the administrator is required to exhibit the following in court:

- An inventory containing a full and true estimate of all the deceased person's property
- All the credit obtained (Form No. 84)
- All the debts owed by any person
- Exhibit an account of the estate showing the assets in his authority

[5] The Notice of Application is to be served to the other beneficiaries. It is like a summons. The Notice must contain the contents of the application, the date on which the application will be heard, and a copy of the affidavit filed by the applicant must be annexed for the possible beneficiaries to reply to.
[6] Informants indicated that court officers might retain the file for up to 7 days before issuing the notice due to negligence.

Time: Within 6 months
Cost: Transportation: visits to banks to verify accounts, TShs 10,000; at least two visits to courts, TShs 6,000

STEP 16
The appointed administrator is required to publish a notice in the official gazette or in local newspapers (such as *The Guardian* or *Majira*) in order to allow any person who may have a claim against the assets to notify the administrator within 60 days. The administrator publishes this notice within 2 months of his/her appointment as administrator.

Time: under 2 months
Cost: publication costs, TShs 84,000

STEP 17
If no objections have been received after the aforementioned 60 days have expired, the court will grant the beneficiaries (such as the wife of the deceased) the power of inheriting the estate of the deceased. The court decides how to distribute the assets to the other beneficiaries, including to the stepchildren of the deceased (children born out of wedlock known to the family).

Time: 1 to 7 days
Cost: Professional fee, if advocate was hired, is 15% of the property claimed + TShs 200,000 for the cost of drawing up the affidavit, the chamber summons, and to cover transport costs.

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CUSTOMARY PROCEDURE FOR INHERITANCE

1. INTRODUCTION

The procedure for customary inheritance is found in Government Notice No. 436 of 1987. The order is cited as the local customary law (declaration) No. 4 of the order. The places where this order is applicable are Chunya, Dodoma, Kasulu, Kigoma, Ukerewe, and Pangani district councils. Other parts of the country are also applying the same order subject to a few modifications.

2. APPLICABLE LAWS AND REGULATIONS

- The local customary law (declaration) No. 4 Government Notice 436 of 1967/219 of 1967
- The local customary law (declaration) No. 5 Government Notice No. 474 of 1963
- The local customary law (declaration) No. 7 Government Notice No. 604 of 1963
- The local customary law (declaration) No. 8 Government Notice No. 605 of 1963

3. ENTITIES INVOLVED

- Administrator
- Orphans
- Widow/widower
- Clan congregation

4. DESCRIPTION OF THE PROCEDURE

STEP 1

Appointment of the administrator: The family of the deceased, including the clan congregation, shall meet and appoint one of the members to administer the property of the deceased. If the first born of the deceased is an adult, he will be the administrator to his younger brothers and sisters only if he is of sound and good character.

Time: 1 to 3 days
Cost: Breakfast/lunch for the members during the meeting, TShs 30,000; transport for the members in the meeting, TShs 1,000 - TShs 20,000

STEP 2

The administrator takes care of the family of the deceased and their mother with assurance that their property will not be destroyed or lost[1]

[1] The administrator has a lot to do as described in the first schedule, order No. 4 GN 436 of 1967

Time: Depends on the date/time period when the inheritance will be appointed
Cost: No cost to the administrator, as he is not entitled to benefit in any way from the deceased's property

STEP 3

Second schedule of GN No. 436 of 1967: After the burial of the deceased, the whole family and clan members meet with the administrator and decide on who will inherit the deceased's estate.[2]

STEP 4

The deceased's estate and property is appraised and discussions are held concerning all the debts and claims related to the deceased.[3]

Time: 7 days minimum
Cost: Breakfast/lunch, TShs 20,000 - TShs 50,000; transport of clan members, between TShs 10,000 and TShs 30,000

STEP 5

After debts and claims have been calculated, [4] clan members decide on how to distribute the estate.

Time: 1 of the 7 days mentioned under Step 4
Cost: Stationary and photocopies, TShs 1,000; food and drink, between TShs 20,000 and TShs 50,000

STEP 6

The deceased's estate is distributed immediately. This is not more than 1 month after the burial services.

Time: 1 day (within a month of burial service)
Cost: Distribution cost, general cost TShs 10,000 - 30,000

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[2] Some of the tribes in Tanzania discriminate against women in inheriting estates. Consequently, the deceased's brother often inherits the widow and her husband's property. However, the law is to be amended to give widows a greater chance of inheriting the deceased's estate, in trust for the sake of the children. The Tanzanian Law Reform Commission's Report recommended the following:

- A unanimous decision must be reached on the distribution of the estate left by either spouse on an equal basis
- The surviving spouse and the children of the deceased shall be entitled to a store and the remaining part of the estate
- The distribution of movable properties should be on an equal basis among all the deceased children, regardless of their gender
- The majority of widows are inherited by their husband's brother as their second wives for the sake of raising them together with the children. The law should be enacted on this issue
- When the husband dies and leaves the immovable properties such as residential houses, the surviving wife should be entitled to inherit such property for life, in trust for the surviving children.

[3] This is done by the clan members.

[4] Those who have claims are called to present their claims. Those who owed the deceased are also mentioned and the preparation for payment follows.

PROCEDURE TO RESOLVE LAND DISPUTES

1. INTRODUCTION

Land Courts have just been installed. This procedure is a simulation of the sequence of steps that rural inhabitants would have to follow when a dispute over land arises. The sequence was built on the basis of a number of cases gathered in Mbozi, studies on Ward Tribunal functions, and case studies.

2. APPLICABLE LAWS AND REGULATIONS

- Land Courts Act No.2 of 2002
- Land Acts No. 4 &5 of 1999
- Ward Tribunal Act of 1985

3. ENTITIES/ INSTITUTIONS INVOLVED

- Applicant
- Respondent
- Village Land Council
  - Chairperson
  - Secretary
  - Council
- Ward Tribunal
  - Chairperson
  - Secretary
  - Members of the tribunal

4. DESCRIPTION OF THE PROCEDURE

STAGE 1: Claim of land related right due to a default by either party. The party claiming a right may be confronted with the choice of where to take the matter since it involves the customary law of the area concerned (approximately 20 days)

STEP 1
Complainant takes the matter to the ten-cell leader or clan leader in order to settle the matter.

STEP 2
Ten cell leader/clan leaders organize the meeting of the parties in order to settle the dispute.

Cost: fees for ten-cell leader, TShs 5,000

STEP 3
Parties are informed of the decision. If they did not succeed in settling the issue, the aggrieved part may take steps to enter the courts system.

STAGE 2: There is a new court system for land disputes, which aims to simplify access to courts by bringing services closer to the people. The ordinary system is also applicable since these special courts have yet to be implemented in most of the country. Village land councils consist of 7 members approved by village assembly. This body will mediate all land disputes brought before it. (30 days)

STEP 4
The complainant reports the dispute to the secretary of the village council.

Cost: Minimum TShs 1,500 filing fees

STEP 5
The secretary of the village council summarizes the complaints in writing and issues a summons to the adverse part to appear before the council regarding the dispute.

Cost: Transportation

STEP 6
The parties will appear before the council members for mediation, in search of an amicable solution. Both parties are heard.

Time: Several days, depending on the number of witness produced by each party
Cost: Transportation

STEP 7
The Council will hand down its decision.

Cost: Nil

STEP 8
If any party in the dispute is aggrieved by the decision of the village council, he/she may appeal to the Ward Tribunal.

Cost: Transportation

STAGE 3: Appeal before the Ward Tribunal (up to 98 Days)[1]

STEP 9

Complaints are lodged to the Secretary of the Tribunal who will cause it to be submitted to the Chairman of the Tribunal.

Time: 1day
Cost: Filing fees, minimum TShs 1,500; transportation

STEP 10

The Chairman of the Tribunal will select three members of the tribunal to mediate the reported dispute.

Time: 1 day
Cost: Nil

STEP 11

Tribunal members will mediate between the parties and hand down an order or decision.

Time: Minimum 2 weeks
Cost: Transportation to the ward tribunal by parties and witnesses

STEP 12

The Chairman of the Tribunal subscribes the decision.

Time: Minimum of 2 weeks
Cost: Transportation to the ward tribunal by parties and witnesses

STEP 13

Parties are notified of the Tribunal's decision. The aggrieved part by the order of the ward tribunal may appeal to the district land and housing tribunal within 45 days.

Time: within 45 days
Cost: Legal fees, minimum TShs 1,500

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[1] The Ward Tribunals established under Ward Tribunals Act 1985 shall be the court for the purpose of Act No. 2 of 2002 and Land Acts No. 4 & 5 of 1999 and have jurisdiction in relation to its area in the district it was established.

PROCEDURE TO REGISTER A BIRTH AND OBTAIN A CERTIFICATE

1. INTRODUCTION

This is the procedure followed by people who did register a birth within the time stipulated by law. All birth registrations for persons aged 10 years and above throughout Tanzania must be sent to the Registrar-General in Dar es Salaam for approval.

2. LAWS AND REGULATIONS APPLICABLE

- Birth and Death Registration Act Cap 108
- The Tanzania Citizenship act of No. 6 of 1995
- Statutory Declaration Act of 1996

3. ENTITIES/INSTITUTION INVOLVED

- Child/Applicant
- Parent/guardian applying for the child
- Local government chairperson
- District Births and Deaths Registrar
- Commissioner for Oath (Court magistrate or advocate)
- Immigration Office
- Tax Revenue Authority (TRA) Office
- Registrar General

4. DESCRIPTION OF THE PROCEDURE

STEP 1

The applicant obtains and fills in 4 copies of form No. BD 15A, available at the District Registrar's Office, and attach a passport size picture of applicant the applicant to each copy.

Time**:** Visiting the office, 1 day; filling out the forms and obtaining photos, 3 days
Cost: Transport to the office, TShs 2,000; 4 passport size photographs, TShs 3,000

STEP 2

The applicant obtains the supporting documents (letter of introduction) from local government and other institutions that can prove his/her birth (e.g. medical certificate, etc.)

Time**:** Visit to the doctor's office, 1 day; collecting the documents, 1 day (after 7 days)
Cost: Transport for the 2 trips, minimum of TShs 4,000

STEP 3
The applicant goes to the TRA office and buys the stamp duty for each form.

Time**:** 1 day
Cost: stamp duty, TShs 4,000; transportation

STEP 4
The applicant takes an oath to prove his/her citizenship before a notary public officer or a commissioner for oaths.

Time**:** 1 day
Cost: Fees TShs 5,000

STEP 5
The parents/guardian and the applicant go to the Immigration Officer in the immigration office at the district to certify the applicant's citizenship/nationality.

Time**:** 1-2 days
Cost: transport to the immigration office, minimum TShs 5,000[1]

STEP 6
The proof of citizenship documents are obtained from an Immigration Officer

Time**:** at least 1 week
Cost: Transportation, TShs 1,000

STEP 7
A hearing/interview is then held between the district Registrar of Births and Deaths and the parents/guardian of the applicant. If the child is more than 10 years old, he/she must be present as well.

Time**:** 1 day
Cost: Application fees, TShs 10,000

STEP 8
The District Registrar of Births and Deaths encloses the application forms and the comments from the Immigration Officer and sends them to the Registrar-General P.O.

[1] Since there are very few district level immigration offices, people must go to the regional one.

Box 9183 Dar es Salaam for approval. [2] The Registrar-General will retain a copy after approval and the rest will be sent back to District Registrar.

Time: several months
Cost: Postal service (expedited mail services), TShs 8,100; transport to postal office for the Registrar or his delegates, TShs 3,000

STEP 9
The Registrar-General approves the registration of birth, gives the file a registration number, and returns the copy to the District Registrar.[3]

Time: 1 to 4 days
Cost: Postal service charge (expedited mail service - EMS), TShs 8,100

STEP 10
The District Births and Deaths Registrar registers the birth.

Time: The same month after receiving the copy from the Registrar-General
Cost: Stationary, TShs 500; transport for the collection to the Registrar's office, minimum TShs 3,000

STEP 11
When the certificate is ready, the District Registrar issues the certificate to the applicant.

Time: 1 day
Cost: Transport for the applicants to the Registrar's office, TShs 3,000

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[2] In other regions, e.g. Dodoma, the applicant must obtain the forms and take them to Dar es Salaam him/herself.
[3] The Registrar-General has custody of all filed register books and of all quarterly returns made by the District Registrar; prepares alphabetical indexes of births registered from his returns.