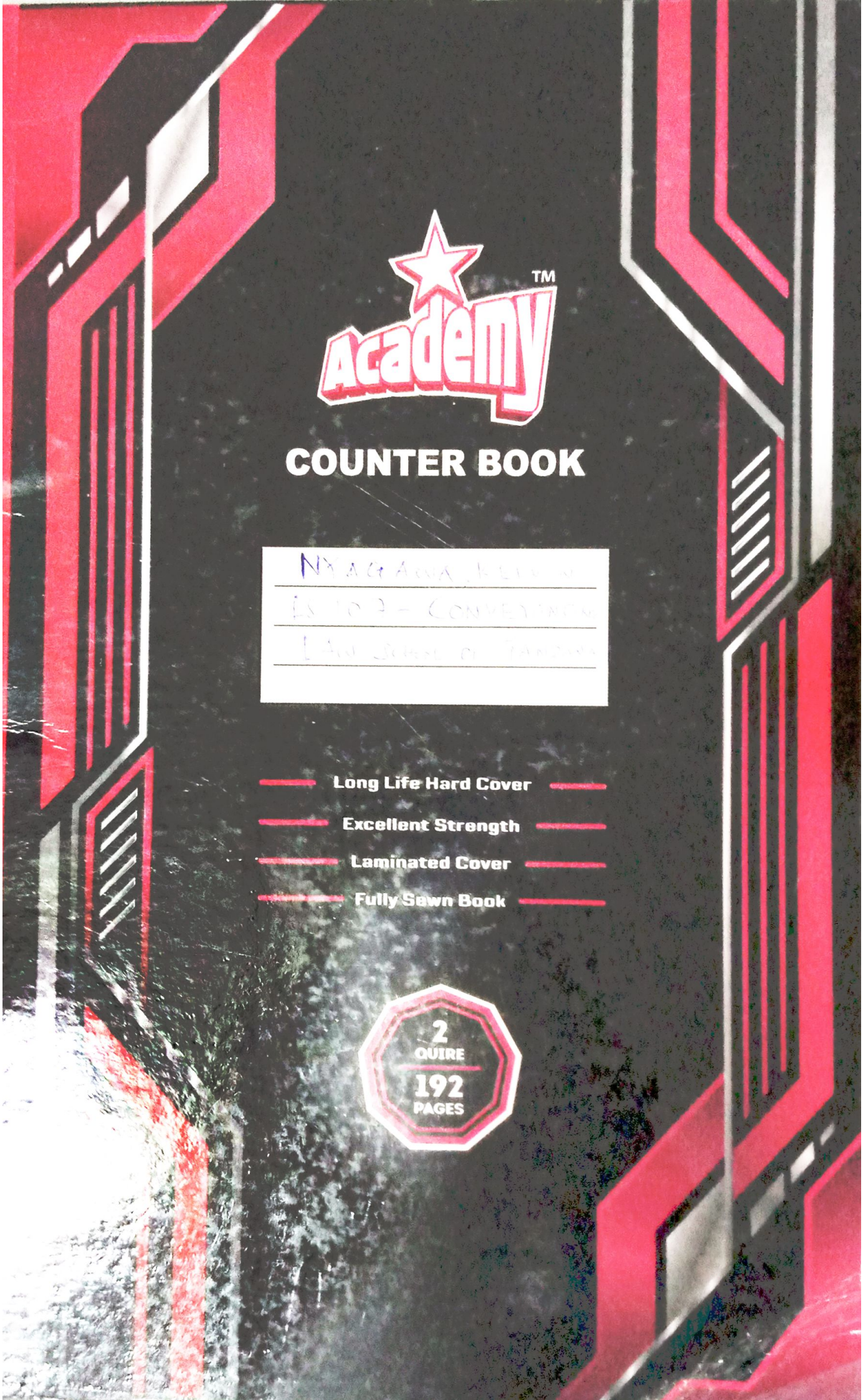

Academy
TM
COUNTER BOOK
Long Life Hard Cover
Excellent Strength
Laminated Cover
Fully Sewn Book
2
QUIRE
192
PAGES

ACADEMY
PAGE NO.
DATE

Kelvin Ezzaudi Nyagawa. 19/May/2025

40TH COHORT - 2025

MR. K. SANGA
(Coordinator)

Conveyancing - deals with transaction in Land matter transactions in real property.
Miamala ya kuenye ardhi.

Be it sale, gift, inheritance, Mortgage etc

OBJECT RESULT FOR STUDENT / what is expected.

- You must be able to apply appropriate Legal principle and theories to effect various Land transaction.

You must have a good knowledge in Land Law

Master three things:-

- The Law, Law as whole eg Law of succession
- Know the procedures
- Know the document

The assumption is that you know the Law. In this week you have to know procedures and know the document.

For LST - Questions Type
Procedures + Documents only

We want to know the procedures and documents.

ACADEMY
PAGE NO.
DATE

We will survey on the following:-

1- Land acquisition
How does one get Land

2- Transfer of Land
- How can it be given to someone else
- Transmission by operation of the Law

3- Leases
Issues relating to lease
How can you temporarily use the Land which is not yours?

How is it protected?

4- Mortigage
Issues relating to Mortigage
How can you use Land to get finance

5 - Unit Pittle property / Condominium property
You can also own horizontal not necessarily
- Vertical.
Not necessarily iwe ghorofa. Might be rooms.

Books You need two books:-
- Theoretical Foundation of Land Law: in Tanzania
Professor Tenga & Mramba.

- Conveyancing and Disposition in Tanzania, 2020
Tenga and Mramba

- Read the Laws posted as well.

ACADEMY
PAGE NO
DATE

Question:
You are a graduate of Law from one of the prestigious University in Tanzania. You happened to have passed your Land Law with flying colours. One Mkamakumi heard of your distinctive score in Land Law given a fear of legal mechanics, he has approached you for some pieces of advice based on Land Law as his memory is still fresh on how he was denied a grant of Land by the government. Now that you have Mr. Mkamakumi at your disposal for advice on the following alternatives:-

1. The manner in which a person can acquire Land in urban areas in Tanzania with clear description of any suggested mode. You may use many explanatory details and authorities to make your advice comprehensive and authoritative.

2. The manner in which a person can acquire Land in rural areas in Tanzania with clear description of any suggested mode. You may use as many explanatory details and authorities to make your advice comprehensive and authoritative.

3. From the suggested modes that may have been suggested above explain the nature of the rights, interests and obligations obtained.

ANSWERS:
2. (i) Clearing of a virgin Land
(ii) Inheritance
(iii) Allocation by the local Authorities - S. 16 & 15
(iv) Purchase of Land
(v) Customary right of occupancy
Section 22 (1) of the Village Land Act - Applies
Section 25 - GCRO

Conditions - S. 29 of VLA

(vi) Assignment
S. 30(1)(c) of VLA
Those exercising right of sale

(vii) Purchase Private
Whereby approval is required
S. 31(1) of VLA

(viii) Grant of derivative right by the Village Council
Wherein, the same is under Section 32(1) of VLA

(ix) Regrant of surrendered customary right of occupancy
Section 36 of VLA

Section 43
Temporary Assignment of customary right of occupancy

ACADEMY
PAGE NO.
DATE

Video Clip:

⇒ Dalali Luvanda

Received a call that NHC House are on sale, zina Hati pacha
Location: Mbezi Beach
Buyer said should talk to her Lawyers first.

Anachelewa bao. The intended buyer meet him there
Mr. Mshua - Intended Buyer
The Dalali Luvanda said House are there, Na yeye sio Tapeli, made assurance.

Mshua - Buyer
Luvanda - Dalali

Nyumba 3 rooms, fence is a must
Should be a reachable house even during rainy

Dalali made assurance that he is a Broker in every real estate.

I sell houses with Hati and with no Hati.

He said he has documents as well so he should not worry about Wanasheria.

Said Kinyozi is proper.

Went and physically saw the House.

The Buyer said he is satisfied but asked why you a selling the House.

ACADEMY
PAGE NO.
DATE

* The Mama said that the House is under Mortgage. We have paid half of the Loan and further they want to auction the House.

* There is also a Rentee in one room of the House.

So we want to sell the house so as we can pay the Loan.

On the way back, Mshua said he Loved the place.

Went to see another House - Madale;
But Mshua said he does not like the House,
He choose the Kinyerezi's House

He said Mgwa wa kutoka - Tshs. 50,000/=

NEXT DAY AT KINYEREZI HOUSE:
Meet Husband
- Mzee Kijogoo

Husband said everything is available including Title deed.

But all Title were Copies.

Husband said that the House is under Mortgage
Price: 350,000,000
Mkopo: 280,000,000

Accepted : 300,000,000

And said that he will deal with gain za Mapato only (capital Gain Tax) and the rest will be borne by the Buyer.

Buyer said there must be advice from the Lawyers

Sellers accepted.

TO LAWYER'S OFFICE

Advocate

What the Buyer did re < DUE DILIGENCE

Mr. Kijogoo

Mrs. Kijogoo

Connected by Dalali Luvanda

I want to buy the House :-

Stamp duty
Payment to commissioner
Capital Gain Tax
Kodi
Hati pacha
- What is it
- Ubakiki wa mpaka
- Umetiki
- Copy
- Mortgaged House

} Buyer said he will everything

Do the Assignment.

Collection: Wednesday : Typed Assignment : 16:00hrs

ANSWERS:

Qn. No: ACQUISITION OF LAND IN URBAN AREAS (MODES)

1. By purchase
2. By gift interviros
3. Inheritance
4. Transmission by operation of the Law. S. 71 of LRA
5. Transmission by Court order
6. By Allocation by - Granted Right of occupancy
7. Adverse possession

CUSTOMARY RIGHT OF OCCUPANCY

1. By allocation of Customary Right of occupancy
   - Application S. 22 of Village Land Act
   - Granting S. 25 of Village Land Act
   - Form of Application Village ~~Form~~ Land Form No. 18 (Made under section 22)

Offer from the Village Council - Form No. 19 (Made under S. 24)

Acceptance of offer by the Applicant - Land Form No. 20 (Made under S. 24

Certificate of Customary Right of occupancy - Land Form No. 21 (Made section 25)

Application for a copy of the Right of occupancy (Section 57) - Land Form No. 22

Notice to pay Rent - Form No. 23 (section 28)

ACADEMY
PAGE NO.
DATE

2. Assignment
Section 30
Land Form No. 24 - Notification, by the Applicant

Approval / Disallowance by the Village Land council
Land Form No. 25
Made under section 30

3. DERIVATE RIGHT
Section 31(5) of Village Land Act
Form No. 26
You should state the nature of disposition

Certificate of Approval to a Derivative Right
Village Land Form No. 27

Application for a DERIVATIVE RIGHT
Section 32 of Village Land Act

DISCUSSION IN CLASSES

1. In rural areas the governing council is the Village Land Council.

1. Adverse possession
Twelve years without being interrupted
Section 16 of LRA (Land Registration Act)

2. In 1999
- General Land - Granted Right of Occupancy
- Reserved Land - National parks, TANROAD etc
- Village Land - Each and every village has its demarcation

Is it possible to clean the virgin land now?
NO! Before 1999 that was possible

⇒ Village Land can be converted to the General Land
One may apply for a granted Right of Occupancy.

2. By allocation
The Village Land Council can allocate Land to any person.
You must apply.

3. By way of gift

4. By inheritance

5. By transmission
- Death
- Auction
- Bankruptcy

6. By Purchase

7. By derivative / Usufructuary right
—

JOINT OCCUPANCY IN COMMON
What is the difference
S. 159 of the Land Act

In Joint occupancy - all owns, the survive will own the land

Question: Assume they all got an accident. Who is likely to own the Land.
The one with lesser age will be the holder and

the property will go to the family of him/her

QUESTION: EXPLAIN THE NATURE, RIGHTS AND INTERESTS

Land Act

1. Right of occupancy
   S. 19 and S. 20 of VLA

2. Right of compensation
   S. 11 of Land acquisition Act
   S. 3(9) of Land Act

3. Security of Tenure
   S. 47 of LA
   S. 36 of VLA
   Article 24 of CURT

OBLIGATIONS

1. Fees
   Pay
   S. 37 (1) & (2) of Land Act

NATURE of RIGHTS

1. Granted Right of occupancy
2. Derivative Right of occupancy
3. Customary Right of occupancy

INTERESTS

1. Use of Land
   Exclusive Right of occupancy

2. Dispose the Land
3. Lease the Land
4. Mortgage
5. Develop the Land
6. Easements
7. Maintain the Land

5 → Right
6, 7 → Obligation - within 6 months

OBLIGATION

1. Use Land as per the allocation
   You cannot change the use of Land

2. Return the Land to Authority
   GRO - TIC
   CRO - Village Land Council
   } Derivative Right

3. Right to Lease - S. 75
4. Right to Mortgage the Land
   } RIGHTS

Rights came with obligation Therefore the Right can be revoked
S. 31 of Land Act.

5. Obligation to vacate Land when it has been acquired by the Person
   Land Acquisition Act
   Goes hand in hand with compensation.

Compensation must be prompt and fair

It should be as per the value of the property.

ACADEMY
PAGE NO.
DATE

6. S. 36 of Land Act
Notification & Consent - From Commissioner for Land.
Approval

Any disposition you should notify the Commissioner

Page 10 - Assignment Task

CONCEPT OF PROPERTY

Any transaction in Land should be in writting.
Section 62 of Land Act

⇒ The codified/civil Law by justice wrote and define a relationship between people and people and people and things:-
- The relationship between people and people make people to keep promises which made them to give one another some interests and rights to one another

Question:
Identify the Incidents/Attributes of Granted Right of occupancy and how are they reflected in the Land Act

1. Granted by the president
S. 4(5) and S. 29(3) of The Land Act

S. 22 of the Land Act gives the attributes/incidentals
(a) By president
(b) In general a reserved Land

(c) Land which has been surveyed
(d) Required to be registered under Land Registration Act
(e) For a period not exceeding 99 years
(f) at a premium
(g) For an annual rent which may be revised from time to time
(h) Subject to any prescribed conditions, restrictions as
(i) Capable of being the subject to the subject of disposition
(j) Liable, subject to the provisions of the Act, to revocation
(k) Liable, subject to the prompt payment of full compensation, to compulsory acquisition by the state for public purposes.

Section 45 and 77 of Land Act
Also S. 56 read together with S. 57(1) of Land Act.
S. 2a(1)(g) of Land Act
Section 33(1) of The Land Act
G.N No. 347 of 2019

Part IX of Land Act - Leases
Part X lease - Mortgages
Section 2 of Land Act defines disposition
- Exchange
- Sale
- Transfer
- Grant
- Partition
- Exchange lease
- Assignment
- Surrender
- Disclaimer
- Easement
- Use profit a prendre right
- Lease

ACADEMY
PAGE NO
DATE 19/05/2025

Part XI - Easement

Right of way

Implied covenant

You have bought subject to covenant.

It is temporary use of the Land without possessing it.

Question: Is that Easement has no exception?

Section 31 of the Law of Limitation Act [Cap. 89 R.E 2019]

If used for 20 years or more, such right become absolute

AT A PREMIUM

Section 31(1) of Land Act

Section 22 (f)

LIABLE SUBJECT TO ~~PAYM~~ COMPENSATION

Section 22(1)(k) - Compulsory acquisition for public purposes.

Section 11 of the Land Acquisition Act

Section 3 (1) (g) of The Land Act

SECTION 22 (1) (d) - REQUIREMENT FOR REGISTRATION OF LAND, MANDATORY REGISTRATION OF LAND

Section 9(1) of the Land Registration Act.

Section 10 - Application for Registration

GRO can only be granted to a surveyed land by a certified surveyor

Acts to Buy

SURVEYED LAND

1. Land survey Act

* Section 2 of the Act
  Land with boundaries which has been surveyed by surveyor
  Land survey (General Regulations) of 1959

⟹ Land Registration Act

⟹ Urban Planning Act

{ Incidents / Characteristics of granted Right of Occupancy

⟹ **CONCEPT OF PROPERTY**

What is the concept of property?

Property is being discussed in land or in other laws they call REAL PROPERTY.

The concept of property is that since ancient time there has been a need to protect property ownership that is why a REAL PROPERTY is also recognized and protected by the Law.

What is being protected is a bundle of right which include:-

- Possession
- Use
- Enjoyment

- Transfer
- Exclusion of others subject to legal restrictions.

So various jurisdiction have been striving to protect and recognize rights and responsibilities in property ownership.

In acquiring then they will be checking how a person is acquiring it:-
- Is it GRO | Granted by Govt
- Gift
- Adverse possession
- Inheritance
- Purchase

In owning then, how does a person use? Is he legally using? Kuyamba bhangi (restricted).

There can be also customary restriction

There can be also application of ZONE & PLANNING LAWS
- Eg RESIDENTIAL VS COMMERCIAL
- LIGHT INDUSTRIES
- Eg BAKERY

In Transferring then the govt control in terms of jurisdiction because there are various systems.

Others have FREEHOLD system. The Owner own the Land absolutely with free to transfer etc.

Other there is LEESEHOLD SYSTEM- This is for a certain period of time where the ownership revert back to the Landlord after the end of the Lease

E.g Tanzania 33, 66, 99 years

We are not the owners, we just have right to use.

In other they have COMMON HOLD: This is where individuals can own a unit and collectively manage shared areas.

E.g Apartment

Common in Uk
And Tanzania since inception of UNIT TITLE

In other they have COMMUNAL OWNERSHIP, held collectively by a community a group and often governed by customary or indigeneous Laws.

In Tanzania we said such Law should be in conformity with the constitution. Should not be repugnant or inconsistent.

In other areas, there is FULLY PUBLIC OWNERSHIP, wherein Land is owned by the gvt and citizens are mere Tenants.

In other you may see there is ownership of General reserved land. Eg National parks, Roads e.t.c

ACADEMY
PAGE NO.
DATE

NOTE:

In real property - Disposition must be in writing

And no disption which will be enforced if not in writing.

Before 1999, it was possible to sell Land orally.

Coming of Act No. 3 & 4, No disposition if there is no writing.

Read Section 63, 64, of The Land Act

S. 64(1) of Land Act
"The contract should be in writing."
"Signed by the parties."

Go & Google this Law

Statute of promises, 1600 - Which includes Land should be written.

Go and do the Assignment based on the clip I sent you.

Tomorrow ⟹ Case study session 2 which is at page 8

ACADEMY
PAGE NO:
DATE

20th May, 2025

Mr. E. Lukito

OVERVIEW OF CONVEYANCING

Questions:

(a) What are the red flags to look out for in a Conveyancer

(b) What are the attributes of a good Conveyancer

(c) Based on your understanding of the above, what are the role(s) of a Conveyancer in a Conveyancing Transaction?

A: RESPONSES - RED FLAGS

- Unprofessional
- Poor communication
  - Eg Responses without explanations
- Unreasonable fee and Hidden costs
  - Lack of transparency
- Unrealistic expectations

B:

ACADEMY
PAGE NO.
DATE

C: ROLES OF A CONVEYANCER IN A CONVEYANCING TRANSACTION

1. To inspect
2. To inform the client on everything
3. To draft the documents
   Eg sale Agreement
   Lock in Agreement
   Lock out Agreement
4. To protect the client from the risk of being ~~from~~ entered into fraud.

SESSION - MR. EMIL LUKIKO, Advocate
(I was an employee of Law school of Tanzania from 2011 to 2021)

OVERVIEW OF CONVEYANCING

1. What is conveyancing? - Specific subject
2. Who is a Conveyancer? Is a person
3. And what are the attributes of Conveyancer
4. Conveyancing process & Task of a Conveyancer
5. Relevant laws

What is Conveyancing?
Is a transaction which involves real property (land). Legal mechanisms for transfer of occupation a ownership of Land or interest in Land.

How to transfer ownership of interest in Land

- Ownership
- Occupation } Three terms in the definition of
- Interest } Conveyancing.

Think of Lease
When you Lease your property you transfer occupation. Tenant receives the right to occupy the property only and not interest. It is for a period of time

Think of sale,
When you sell a peece of Land you transfer all three - Ownership, occupation and interest.

Think of Mortgage
When you Mortgage a property, what do you transfer?
ANSWER: Interest

You retain the ownership and occupation but only transfer interest subject to the payment.

S. 126 - Remedies of a Mortgagee which among others is SALE

* CONVEYANCING deals with how to transfer.

If you read s. 2 of Land Act gives you a definition of Disposition.

But how you undergo these kind of transaction that is Conveyancing. It is a process. It teaches you how to do that.

Also,
⟹ Som
are
prote
incur
he
Buyer

ACADEMY
PAGE NO.
DATE

- Conveyancing deals with Rights and obligations of the parties at different stages in land transactions.

What are the rights and obligations of the parties is a domain of Conveyancing.

E.g
We teach you to be professional and not Rakeli Mapali)

Assume there is pre-contractual stage of which it there.

E.g shown the property today, do you go front to buy? No answer is No. You should undergo stages e.g VERIFYING THE TITLE DEED OF THE SELLER

How do you do it?

You should go and do official SEARCH, Inspection e.t.c. Gather many information as possible.

Also, what are the duties of the Buyer and Seller?

⟹ Some transactions can take so long to complete. You are still in Negotiations. How is the SELLER or BUYER protected under this Agreement? There are costs to be incurred then how do you go about? Think of Vendor, he may decide not to receive any offer from other Buyer, How are you going to protect him?

What about you VENDEE and VENDOR. E.g You come to discover that the property is of high value and changes, then how do you protect.

There are contracts parties can enter - LOCK IN and LOCK OUT AGREEMENT.

CONVEYANCING INVOLVES

- Drafting papers or Instruments
- Signing and
- Delivering to another with INTENTION to transfer the Title to or creating an (Interest) on property in favour of such other person.

- Intention provides the nature & status of what is to be conveyed.
  - Gift, Sale, Demise, Charge or what?
  - Status of what is conveyed depends on property regime in place matters; namely implication of ownership - Use, occupy, dispose.

If the intention is to transfer ownership that suggests sale

If the intention is to transfer occupation that suggests lease

If the Intention is to transfer interest, that suggests Mortgage.

No transfer/ conveyance without disposition.

Assume that the Law had only the right to use and occupy? Means we could have no right to dispose the landed properties.

When a person acquires property (say it is a Grant) he can use that property for a period of time. Is he entitled to sell?

When you sell, you are disposing and the other acquire. So it is like a circle of acquiring, use and dispose.

As I said, disposition is what determines Conveyancing.

In the course of transferring property, there might be residual interests / third party interests :-

- ENCUMBRANCES
- EASEMENT
- LONG TIME LEASE
- MORTGAGE

Let us go back to Marriage, that any property that has been acquired during the subsistence of Marriage is a MATRIMONIAL PROPERTY (Rebuttable presumption)

⟹ That is why when you want to dispose such property they require SPOUSE CONSENT.

The above does not mean that the property is not fit for Transfer but the transfer only depends on the nature of Encumbrances.

A good Conveyancer should be professional. So it

very important for you guys to have knowledge of Land Law

Why knowledge of Land Law is important?

Transfer depend on Land Tenure Rules:-
- How simple & complicated?
- Whether they confer security of tenure or not?
- What is the property? Land / Rent / Lease in the land? term of years

- Conditions of right of occupancy
- Do they provide for Transfer
- Are there Minimum requirements?

Transfer depends on Rules of Disposition:-
- Are there prerequisites. Eg Consultations, Fees, Approvals
- Any Special Considerations? Equipment Plantation Sole sale (credit, Act Section rule (Fixtures and chattels)
- Are there limitations as to the Nationality, residence etc

Limitation in there - Individuals and Corporate bodies - Special status to those Diasporas to Form Tenancies - Make a follow up

FIXTURES & CHATTELS

Purpose

Permanence (Degree of affixation)

What was the purpose? Were they meant to be permanent?

ACADEMY
PAGE NO:
DATE

Thing may not be permanently affixed to the land but was meant to be permanent so that is FIXTURE.

Ad Coelum rule
Everything below the surface, on the surface and above the surface.
Rule of section 2 - definition of land, what does it includes.
Some have been excluded under section 2 - Flora and Fauna, Minerals, Oils.

Below the surface I do not have right. But what about above the surface? Where does your right ends?
"IT IS A REASONABLE USABLE SPACE ABOVE THE SURFACE WHICH IS SUBJECT TO REGULATION OF THE LAW"

Eg you see Urban Planning refuses/prohibit to build more than 5 storey building 5 floor building.

Below the surface depends on what is down there:-
We have:- ① Mining & Petroleum Laws
② Water - Laws

We look on the aggregates of shares and not the number of Tanzanians. To determine the Foreign Company.

Question: Derivative Right
But they ought to first determine whether it is a Foreign Company or Local Company. 5 were Tanzanians and 2 were foreigners who, these two, were having more

than 51% Threshold. Most of student look on the number of people and not shares. They ought to look on the Threshold.

Read DERIVATIVE RIGHTS
We look on the shares and not number of persons

A CONVEYANCER
Is a person who conveys something/facilitates/helps the parties to conveyance.

Help the parties to make a legal deal

Help parties to avoid the pitfall of transfer

What he does Is due diligence - Examination of the Title. To ascertain whether Vendor has a valid, good and marketable Title.

- CASES OF FRAUDSTER: Due diligence processes UK Statute of Fraud 1677 - essence of Writing. PIRA vs MANJI (1930) 1 TLR(R) 457, s. 64 of Land Act

Read Section 39 of the Land Registration Act, Cap. 334 R.E 2019
"The Law presumes that the purchaser is aware of Encumbrances or had an actual Notice of Encumbrances"

You should go and do SEARCH so as to know that the Land is FREE from ENCUMBRANCES.

ACADEMY
PAGE NO
DATE

ACTUAL NOTICE / CONSTRUCTIVE NOTICE

Also visit the site so as you can be aware of everything pertaining to that property. Interview vendor and surroundings.

Then, how do you use those representation. You rely on the representation and you buy the property later on to find he misrepresented you. What do you do?

There might be a lot of representation.

What if representation turn to be untrue. What do you do? Can you sue for Misrepresentation? And mind you there is a clause "ENTIRE AGREEMENT" that the Agreement is everything. How do you go about.

ANY REMEDY?

And I told you there is no encumbrances and we did not put it into the Agreement. What to I have to do?

Those representation should go to the Representation and Warrant. So as later on to see that what he or she represented was not true so as you can have remedy.

Conduct due diligence as a Conveyancer.

CONVEYANCER: QUALITIES & ATTRIBUTES

1. Should be a good communicator
   Should explain in details. Make even the Lay person to understand what you are doing. Understand the purpose. And know how to protect your client (Vendor or Vendee). What if Vendor/Vendee change his or her mind.

2. Expert Advise:
One you have skills in when you can Communicate.

3. Proffessionalism
Integrity, sensibility.
Have knowledge of Land Law
Be qualified
Sound Judgement
Handle transaction with sensitivity.

E.g Before 2008, there was a requirement of Approval for DISPOSITION TO MORTGAGE LAND but changed with the ~~Finance~~ Mortgage Law, 2008.

4. Knowledge
A person with:-
~~Acte~~ acute understanding
Quick perception
Retentive Memory

CONVEYANCING PROCESS & TASK OF A CONVEYANCER

- Basis of Conveyancing in Section 2 of The Land Act

ACADEMY
PAGE NO.
DATE

PROCESS OF CONVEYANCING INVOLVES

1. Consideration of Relevant Laws & Principles
2. Advising
3. Drafting
4. Attestation
5. Filing of documents in appropiate registries.

TASK OF CONVEYANCER

1. Advice clients on legal & procedural requirements
2. To draft documents
3. To conduct due diligence

RELEVANT LAWS ON DISPOSITION

1. Land Laws:-
   Land Act,
   The Village Land Act
   Land (Forms) Regulations, 2001
   Unite Title Act, 2008 (Housing Law and not Land Law).
2. Facilitative Laws
   Registration Laws:
   - Land Registration Act
   - Registration of Documents Act
3. Control Laws:
   LCA

ACADEMY
PAGE NO
DATE

4. Financial Laws
   Stamp Duty Act, Cap. 189 – 1% of the value is levied
   Income Tax Act, (2004) – Capital Gain Tax (Vendor who gained from the transfer) Compliance.

3. Investment Laws
   – TIA (1997) } Merged now
   - EPZ Act (2002) } There is a new Law, go and find

6. Professional Laws
   – Advocate Act
   - Rules of Antiquate of Tanganyika Law society
   – Advocate Remuneration Order.

7. Planning Laws:
   – Urban Planning Act
   – Land use Planning Act
   – Local government Laws (Act 7 & 8 & Subsidiary Legislation).

8. Survey Laws:
   – Land Survey, Act, Cap. 324

9. Environmental & NR, Laws
   – Environmental Management Act (2004) & Regulation
   – Specific natural resource Laws.

10. Housing Laws
    – Unit Titles & Regulations

11. Common Law Principles & Doctines
    – Quicquid Plantatur solo, solo cedit
    – Ad coelum Rule
    - Rule of Caveat Emptor (Notice)

FRAMEWORK OF THE LAND ACT AND ITS APPLICATION TO DISPOSITION OF GRANTED RIGHT OF OCCUPANCY
MR. SANGA SESSION 2 TODAY.

Question 2: Advise on the necessary fees, Taxes and documents to be prepared and their justification.

Fees:
The Land (Fees) Regulations, 2011
Made under section 174 and 179
↳ Making regulation
Schedule to the above Law

Taxes
Stamp duty - 1% of the amount/market price of the property ← any transfer
Capital Gain Tax - Income Tax Act
(CGT) (3%)
Section 90 (1) of ITA

DOCUMENTS REQUIRED.
Land Form No. 29 - Notification of a Disposition Section 36
Land Form No. 30 - Application for Approval of proposition S. 39 of LA
Land Form No. 35 - Transfer of Right of occupancy, S. 62
Agreement - Land Form No. 38, S. 64
Spouse Consent - S. 159 (4)(a) of Land Act

MODERATIONS

RESPONSES:
Qu 1: Illustrate the Legal procedures involved in the transfer of the Granted Right of Occupancy
Section 19 of The Land Act, provides who can apply

PROCEDURES FOR APPLICATION OF ALLOCATION

1. Application stage
governed by section 25

And the relevant form is Land Form No. 39

2. Determination of the suitability of the Application
The Commissioner determines if at all the application has complied with the Land
Section 26 read together with section 29 of Land Act

It may be rejected

3. Allocation of granted Right of occupancy
Once satisfied you will be granted, s. 29

Land Form No. 22 - Sole person

Land Form No. 23 - Joint occupancy, s. 29

Before 2008
There were five (5) stages
There used to be

PROCEDURES FOR TRANSFER OF GRO

1. Pre - contractual stage and Contractual stage
- The parties negotiate, do diligence

2. ~~Contractual~~ Pre - Completion and Completion stage
Taxes, fees

3. Post - Completion stage
Surrender of Title to the Buyer

ACADEMY
PAGE NO
DATE

PRE- CONTRACTUAL STAGE
- Obtaining the particulars of the property (Buyer be aware)
- Obtaining and pursue title deed
- Conduct on site verification , S. 67 (b), (4)(6), 42(c) of The Land Act
- Administer vendor's Questionnaire
- Conducting official search

CONTRACTUAL STAGE
- Draft and Execute the sale Agreement or Deed
- Pay and obtain Land Rent Clearance Certificate
- Pay and obtain Property Rent Clearance Certificate
- Process Notification and Approval
- Payment of Approval Fee and stamp Duty
- Obtain the Certificate of Approval
- Payment of Capital gain Tax Section 34, 97, 99 of The Land Registration Act

COMPLETION STAGE
- Submit for Registration
  S. 159 of The

  S. 59 of Law of Marriage Act
  S. 54, 62, 63 of The Land Act
  S 92 of Land Registration Act
  Form No. 38

  90(1)
  Section 36, 37, 38 of The Income Tax
  - Capital Gain Tax

S. 59 of Law of Marriage Act
- Look if there are other person there

ACADEMY
PAGE NO.
DATE

HASSAN KIMELA's CONCERN

Pre-contractual stage

They agreed verbally that I am offering to sell you this property but no agreement has been signed

Now, what if the seller changes his mind and say he has got another purchaser, what do we do?

Or on the other hand, the Buyer say he has got lower price. Now what do we do?

My interest was to discuss on LOCK IN and LOCK OUT AGREEMENT

LOCK IN AND LOCK OUT

LOCK IN - you will be bound by the commitment

LOCK OUT - I will sell you at the agreed price and I will buy to you at the agreed price.

{Gazamping & ~~Gaz~~ Gazering}

ACADEMY
PAGE NO.
DATE

Question No. 2

Advise on the necessary fees, taxes and documents to be prepared and their justification

NECESSARY ~~FEES~~ TAXES

- Stamp duty - 1%
  Section 5 and 47(1) of Stamp Duty Act

- Capital Gain Tax
  Section 90(1) of the Income Tax Act, 3%
  if you do not have returns, 10% if you keep record
  Find Laws plus Amendments.
  To cross-check - Section 36, 37 and 38 of ITA
- Tax Clearance Certificate

NECESSARY FEES

- Registration fees
- Property fees
- Valuation fees - Section 40 & 41 of
- Approval fees
- Notification Fees
- Reconsideration fees
- Search fees

→ S. 39(1), (d) (7), (c) (8) of the Land Act

Provided under G.N No. 83 of 2001 the Land (Fees) Regulations, 2001

Finance Act, 2023
Part IX - Amendment of Income Tax Act
S. 90 of ITA, added a paragraph
Go and read
3%. If you do not have records
3% of the whole amount.
This is the Higher amount of Tax.

ACADEMY
PAGE NO
DATE

HASSAN KIMELA Qn:
Question on Capital Gain Tax
Who pays Capital Gain Tax?

⟹ How can the purchaser compell the Vendor to pay Capital Gain Tax?

Paid by the Vendor

Realization on gain

⟹ How to do it?

1. During Negotiations
   Lesser amount but the amount will be paid by the Purchaser

2. Payment by instalment
   Registration stage

   Approval stage

   Finalization stage

DOCUMENTS FOR TRANSFER OF GRO

1. - Contract - S. 62, Land Form No. 38 - Sale Agreement
   - ~~Application for~~
2. - Notification of Disposition, Land Form No. 29
3. - Application for Approval of Disposition, Land Form No. 30
4. - Transfer of Right of Occupancy, Land Form No. 35
5. - Spouse Consent & Affidavit of no Spouse
6. - Commitment Bond, where the Land has not be developed, bare Land, should be developed by the purchaser

7. Title Deed
8. Tax Clearance Certificate
9. Receipt of payment of fees
10. Exclusivity Agreement (if any) (Lock in or Lock out Agreement)

Question No. 3

Apply the Legal procedures in the Transfer of GRO (Granted Right of Occupancy)

1. Notification to the Commissioner of Land
   Section 36 (1) of the Land Act
   Land Form No. 29

2. Application for Approval of Disposition
   Section 39 of the Land Act together with Form 30 of The Land (Forms) Regulation, 2001

3. Preparation of Transfer documents
   Deed of Transfer - Form No. 35
   Made under Section 62 of the Land Act

4. Submission to the Register of Land
   Section 41 of Land Registration Act
   Pay fees

5. Payment of fees & Taxes

6. Transfer of GRO

7. Surrender of Right of occupancy — Cross-check katuin
   S. 42 of the Land Act — Not relevant here

ACADEMY
PAGE NO.
DATE

Assignment:
Customary Right of Occupancy

21/05/2025
KHERY SANGA

CASE STUDY SESSION 5: PRE-CONTRACT STAGES

Question 2:
What are the Important things to Consider before buying the property.

(i) Location of the property
Nearby Road Reserve

(ii) Nature of the Area eg swampy area or otherwise

(iii) Ascertaining whether the Seller has a good title

(iv) Ascertaining Current Market value of the property

(v) What is the status of the property as for as encumbrances are concerned

(vi) Ascertaining prospective costs and expenses that may be incurred

MTABUZI RESPONSES: Question 1. What should be done by the buyer or conveyancer so that the property can transfer free from encumbrances from the seller to the buyer?

1. Conduct official search whereas he will be in a position of knowing:-
(i) Actual Notice S. 2 of Land Act
(ii) Constructive Notice S. 67
(iii) Imputative Notice

ACADEMY
PAGE NO.
DATE

Question 3: Which document(s) must be prepared to protect the buyer? What are the important Clauses.

PROCEDURE ON 1

1. To obtain particulars of the Vendors
2. To negotiate the price with the Vendor
3. Physical verification or on-site verification
4. Official search
   S. 97(2) of LRA
5. Vendor Questionnaire
6. Valuation and survey
   S. 40(3) of LA
7. Checking on the Marital status of the Vendor – Spouse Consent
8. Check on the Capacity
   Age, Capacity, Natural person, Trusts, Company
9. Drafting of the sale Agreement and other documents 29, 30, 35 and 38
10. Registration
    S. 62(1) of LA and S. 41 of LRA
11. Transfer of property by using Land Form No. 35
12. –

OFFICIAL SEARCH

1. Encumbrances
2. Succinct of the Register
   S. 4 of Cap 334 of 2019
   Pay 40,000/= fee
   S. 97 of Cap. 117

Omari Yusuph vs Rahma Abdulkader, [1967] TLR 169
"Legal search done in the Register is Final and Conclusive. Conducted 97 of Cap 334, S.67

ACADEMY
PAGE NO
DATE

CAPACITY IN DETAILS

If married you should go with SPOUSE CONSENT

If not married should go with AFFIDAVIT OF MARITAL STATUS

If transferred by the Company there should be RESOLUTION OF THE COMPANY

If a church or etc then there should be a Registered Trustee

If there could be a Minor there should be an Approval from the Guardian

If PSPF there should be a Resolution from the Board of Trustees

Question No: 2

What are the Important things to consider before buying the property

1. Ownership / Who owns the Land? Good Title through official search
2. Determine and assess if there are any dispute regarding the landed property
3. ~~Access the utility~~ Access to utility
4. Access land rent due (outstanding if any)
5. If there is any development or if at all the development will require approval.
6. Ascertaining the current market value of the property
7. Nature of the property and location of the property
   - Swampy, Reserved etc
8. Physical Location - ~~Background of the pr~~ Boundaries of the Property

ACADEMY
PAGE NO.
DATE

Question No 3

Which document (s) must be prepared to protect the buyer
What are the Important clauses?

1. → Exclusivity Agreement - Lock in Agreement
Interest of the seller is just to part away with the property and get the Money

But this is essential because during conducting of due diligence is of essential

CLAUSES

1. ACTIONS NOT TO BE TAKEN DURING THE PRE-CONTRACTUAL STAGE
"Either party should not engage into the other negotiation with third party regarding the property for 5 months.

2. GOOD FAITH

Kelvin Go and Find the Clauses for the Look in and Lock out Agreement

LEAVE SPACE HERE

ACADEMY
PAGE NO.
DATE 21/05/2020

INVESTIGATION OF TITLES AND PRE-CONTRACTUAL RISKS

KHERY SANGS
COORDINATOR

- Learning outcome
1. Be able to
2. Real property disposition - be able

Title Investigation

Means by which the buyer ensures that sell does own title and can convey it.

Why?

Caveat Emptor principle

* "Caveat emptor qui ignorana no debuit

"Let a buyer who ought not to be ignorant of the amount and nature of the interest which he is about to buy exercise proper caution (Buyer be aware

Section 34, cap 224 - Actual Notice - Land Registration Act

Section 66 & 67 of Land Act - Actual, Constructive, Imputed & Implied Convenants

Matters being investigated can be put into 3 categories:-
1. Matters affecting title to property - anything which affects ability of Vendor to convey property
2. Matters affecting physical condition of the property (Viwanja vya Mabondeni etc).

3. Other matters, operating outside existing legal and physical boundaries, but affects its environment and present & future enjoyment
   e.g. Mumias investments na Baa - You cannot enjoy.

How is IT DONE?

- By allowing buyer to examine title - before exchange of contracts.

- Seller must supply copy of document - entries on register of title and a copy of filed plan

- Seller must supply copies of documents noted on register

- Transfer of Title is a Due diligence Exercise / fact checker.
- Actual Notice Compliance
  S. 34, 97 and 98 of Cap. 334 and s. 67 of Land Act
  - By searching / Inspecting Land register
  - Intended to give the searcher information about subsisting memorials.
  - A person is deemed to have knowledge of the actual Notice no matter how knowledge was acquired
  S. 34 of the Land Registration Act

- Registration of interest is deemed to constitute actual Notice to all persons for all purposes connected with the specific interest / Land.

- In official search, the purchaser is entitled to a reply in writing S. 97(2) of LRA

- Purchaser can get copies of subsisting Memorials Certified or uncertified authorities
S. 98(1) of Cap. 334 - LRA

- Issues on official search:-
1. Title Number?
2. Does the Land being bought correspond with the Title Description
3. Is seller in prospective contract the same as registered proprietor?
4. Are there any incumbrances? How will they affect the Buyer?
E.g Mortgaged property
Mortgagee should be informed, there is normally an arrangement
How much will be paid to the Vendor and a the new buyer will proceed to service the Loan

Or else you pay me money and I pay to the Bank and Discharge Mortgage and Transfer the same to you.

5. Know any discrepancies
6. If enforceable Covenant appears to have been breached, seller should be asked to remedy breach immediately
7. Buyer's Lawyer to cross-check details supplied by Seller and those on the Land Office.

8. If Vendor is a Company, do search with BRELA
9. If it is customary Land, visit the Village Land registry to establish ownership patterns relating to the Land (where registry exists).

10. Presence of Caveat
Indicate Seller's problem linked with third part

Section 78 of LRA, Cap. 334 R.E 2019

Buyer should insist the Caveat be removed by exchange contracts or give undertaking is received from Seller's Lawyer to remove on or before Completion.

11. Just bcz there is restriction on register does not necessarily mean there is Title defect, bcz Seller maybe in position to satisfy terms of restriction

12. Read carefully the terms of restrictions
E.g Co-occupancy
- Joint occupancy - All should call
- Occupancy in Common - Consent is required.
- Money to be paid.

If Mortgage is there, it is safe to be discharged by completion.

For natural person, the Buyer should verify that the Seller is of CAPACITY ;-

ACADEMY
PAGE NO.
DATE

1. Citizenship
ii. ID
iii. Age
iv. Ownership
v. Bankruptcy
- Must be discharged bankrupt
or has a Trustee in bankrupt
vi. Soundness of Mind
E.g "I did it under the influence of Alcohol"

FOR CORPORATE, Check with BRELA:-
(i) Who are shareholders
(ii) shareholding ~~share~~ structure
S. 19 & 20 of Land Act
(iii) Board of Directors
(iv) If Majority are foreigners then it can not own Land rather for Investment purpose under DERIVATIVE RIGHT - Form No. 56

Aggregate of shares and not Number of people

⟹ Husband and Wife if they are selling then there is NO NEED OF SPOUSE CONSENT - Eg when one is an Executrix of Estate

⇒ Under the Companies Act [Cap. 212 R.E 2002] a company should acquire Certificate of Compliance

⇒ Societies Act, Political Sciences, SAECCOS) must be duly registered under relevant Laws.

- When there are Registered Trustee, (RTA) there must be CONSENT FROM ADMINISTRATOR GENERAL TO THAT EFFECT

⇒ Comply with the Due diligence (constructive notice)
- On-site visit
- Vendor's questionnaire
- Questions should be asked to obtain a constructive Notice.

PRINCIPLES ON QUESTIONS TO BE ASKED BY PURCHASERS LAWYER:
- Matters are particularly in the knowledge of seller
- Questions to be precise not of frivolous nature
-

ASK IF:-
(i) Compulsory acquisition orders / notices
(ii) Conservation orders
(iii) Plans indicating primary use

⇒ Know also planning by local & urban Authorities
⇒ If there are past and present dispute
⇒ If there are exclusive facilities e.g right to way
⇒ If there are shared facilities

ACADEMY
PAGE NO.
DATE

CHECK:

- Physical condition / quality
- Check physical identity - any defects on title
- Check for patent defects - Vendor no duty to Volunteer info on patent defects
- Latent defects - requires Vendor's disclosure
- Who in actual possession
- The boundaries
- Fixtures and chattels
- Easement
- Leases
  - Relevant names
  - Rent to ensure no outstanding
  - Ask service charges / bills
  - Ask insurance arrangements

S. 17, 18, & 19 of LCA. See also 74-76 of LA

VALUATION TO BE UNDERTAKEN

Sanctity and Freedom of Contract

- Valuation protect buyer from suffering possible loss due to under valuation or overvaluation
- Surveyor may help to check boundaries

IMPUTED NOTICE

Taking from different people

E.g Lawyer

Agent give information to principle

Do it in due diligence

S. 134, 103, 104, 167, 178 & 189 of LCA

GOOD, MARKETABLE TITLE & FREE FROM INCUMBRANCES Head o what o needed.
- Free from interests and encumbrances

Lawyers should ensure the above.

- Receiving Instructions

Read Lagun { GAZUMPING.
GAZUNDERING
RISKS
PRE-CONTRACTUAL RISK

Both Gazumping and gazundering both affect the contract

That is why there is LOCK IN and Lock out AGREEMENT (Exclusivity)

Read on Enforceability
S- 18. of LA

EXCLUSIVITY AGREEMENT
- Parties
- Description of the Property
- Good faith clause
- Consideration
- Period of Exclusivity
- Consideration

- Non-disclosure of Information (Confidentiality).
- Task to be done by the parties Eg payment of rent etc
- Any breach e.t.c
- Deposit of atleast 5% of purchase price

(a) PETROMEC INC vs PETROLEO BRASILIERO [2005] EWCA Civ. 891

(b) WALFORD vs Miles [1992] 2 AC 128 HL

NOTE:

In T2 Exclusivity Agreements can be made under section 18. of land Act which allows adoption of common Law as persuasive Authority.

ACADEMY
PAGE NO.
DATE 21/05/2025

APOLLO LAIZER
(Asst. Land Registrar)
Registrar of Titles)

PROCEDURES FOR TRANSFER OF GRANTED RIGHT OF OCCUPANCY & DISPOSITION BY OPERATION OF LAW

- Legal Requirements
- Documentation

TASKS:

(i) Advise on what should be the steps to follow and their legal justification,
(ii) Advise on the documents to be drafted and their legal justification
(iii) Advise on all fees and taxes to be paid and the authorities that must be engaged in the process.

Consent of mortgagee, before default.

(i) RESPONSES ← If Mortgaged property

(a) status search (official search) - Real owner - PLA No - Location

(b)

RESPONSES:

KAICO KO,

1. Initial Land identification and Assessment
2. Comprehensive Land search & Certificate verification
   Search S 97 and Inspection S. 98 of LRA
   Search will confirm the Legal status of the Land

   We assume you have actual notice as per section 34
3. On-site inspection & Professional Surveyor
   To visit the site to ensure the site is as described.

4. Valuation

5. Zoning and Land use planning compliance

6. Notification Form 29

7. Application for Approval of Disposition Form No. 30

8. Transfer of Right of occupancy Form No. 35

Qn. 3 FEES & TAXES FOR TRANSFER

1. Capital Gain Tax
   Paid specifically upon realization of the property
   2% of the Gain - If a person has evidence
   10% of all incomings
   Section 90(3) of Income Tax Act - TRA

2. Stamp duty
   1% - TRA

3. Land Rent fee

4. Search fee

5. Valuation fee
   You pay so as valuer can ascertain the value of your property. Paid to valuer

Procedures of transferring Registered Land

If you are dealing with registered Land then there are formal steps
Section 36 - 41 of The Land Act

Documents to be pre drafted
Form No. 38, 29, 30, 35, other additional documents and procedures

Taxes and fees

Now you are done with disposition.

PROCEDURES FOR TRANSFER OF GTZ6

- Introduction
- Stages

INTRODUCTION

Sale of interest involves various procedures.
The relationship between Vendor and purchaser mainly arise from the contract/Deed of Gift / Deed of Exchange etc

Relationship is built through a detailed process.
- It does not end for Vendor and Vendee signing documents. It is different. It is not like purchase of Phone or buying a car. Buying Land is a process

- A successful process gives rise to a conclusive deed.
- That detailed process is what makes conveyance to be difficult.
- Procedures are cumbersome.

CONTRACT

- The process of transfer of Land is not simple as transfer of chattel.
- It involves authorities:-
  - Commissioner for Lands
  - Registrar of Titles
  - Commissioner for Income Tax
  - Chief Govt Valuer
  - Lawyers
  - Land Surveyor

The above are not party of the contract but are engaged in the process.

- Ownership of Land can be acquired from one person to another via many ways. E.g:-
  - Buying it
  - Gift
  - Clearing virgin land
  - Inherit
  - By adverse possession
  - By operation of the Law

- All these ways have one thing in common and that is, they all requires transfer of ownership from the original owner to the new owner.

ACADEMY
PAGE NO
DATE

- Property transfer involves Land which is already registered. also known as Conveyancing (Legal transfer of Land from one person to another).

STAGES OF CONVEYANCING

- Pre-contractual negotiations
- Exchange of contracts
- Pre-completion Procedures
- Completion
- Post-Completion

} Contract stage

Approval

Registration

} Only

Steps depends on Law you perceive. You cannot skip the necessary steps.

1. PRE-CONTRACT NEGOTIONS - STAGE 1

- The buyer and the seller must work out their respective positions
- Here you do DUE DILIGENCE
- Buyer be aware - Caveat emptor (Common Law principle)

- Involves the interaction between buyer and the seller. They exchange informations

- It is not the duty or role of the Lawyer to undertake negotiations although Lawyers mostly do so as to easier the process and guide both parties.

- The objective is to arrive at all the terms, especially the price and the extent of the property that is being sold and conversely bought.

Exa

- If is during this stage where the parties can decide whether to enter into contract or not.

- It is here also where you agree terms to the agreement

- The parties must discuss and agree to any and all conditions such as key dates when contracts are to be exchanged and the completion date.

2. EXCHANGE OF CONTRACTS - STAGE 2

✓ Buyers would be prudent to perform the following steps at this stage:-

1. Make searches of Title records
2. Visit the neighbours and make inquiries
3. Do an evaluation of the property as to determine the true values.

Pre-purchase Inspection - engineers report by buyer

Mortgage - consent
Tenant - Consent
notice to vacate
Repayment of Rent

✓ After these preliminaries are done, a draft contract is prepared by the seller or her Attorney that is sent to the Buyer or his Attorney for signing

✓ It is customary for the buyer to make revisions and upon the resolution of all terms, the stage is set for the signing of the contracts and payment of the purchase price.

Examination Eg On Magomeni there is a Dispute - There is a Plot with two Houses. Inside the Sale Agreement specify two house A & B and the House to be sold is B, but they orally agreed to purchase the whole plot. So we transferred 5% and they were occupiers in

Common in equal shares.

So read all the terms of the Agreement Jointly

Know also issues of Vacant Possession
(*Eg We agreed that I transfer them Vacant possession after three (3) years).

3. PRE - COMPLETION PROCEDURES - STAGE 3

APPROVAL AT STAGE

(i) ✓ Land Transfer Documents are submitted to the Municipal Council for and later assessments for and payment for apportionment of the Stamp Duty and Capital Gain Tax.

✓ Payment of Stamp Duty as a percentage of the price is supposed to be split or shared by the parties.

✓ Seller alone pays the Capital Gain Tax S. 37 and Form No. 30

REGISTRATION.

(ii) The executed document of transfer is accompanied by the original duplicate title for submission to office of Registrar of Titles to record the new owner and Mortgage (s) if any. They will be required to pay Registration fees

4. COMPLETION STAGE - STAGE 4

✓ This is the stage where all the paperwork is signed and the relevant documents submitted to the office of the Registrar of Titles.

✓ After the transfer is registered, you may now be said to be the owner of the property

✓ At this point in the title process the buyer's Lawyers firm will have prepared letters addressed

to the various utilities to register or commence service in the name of the buyer, new owner.

VALUATION REPORT.

Not only the value but reveal other issues such as the use of the property and breach of covenants.

OTHER DOCUMENTS

(i) Spouse Consent & Affidavit as to Marital status / As to no spouse

(ii) Commitment bond

IS REGISTRATION IMPORTANT?

Yes disposition must be registered as per s. 41 of LRA

Section 41(2) of LRA to be registered there shall be submission of relevant documents.

Section 41(3) — LEGAL IMPLICATION OF REGISTRATION

Once registered, it become effected to transfer, vary, create, extinguish interest in a registered Land.

Say interests which were formerly to the SELLER goes to the BUYER directly.

⟹ If you dont registe then the interest, rights, e.t.c will not transfer.

5 POST-COMPLETION OR CLOSING STAGE

✓ The buyer's attorney ensures that the transfer is completed and the duplicate certificate of title is accurate.

✓ Further, the title reflects the discharge of any prior mortgage (s) and the accuracy of any new indebtedness

LEGAL REQUIREMENTS

Law of Contract
S. 11, 12, 13, 14

Age of Majority Act
Section 2

Mental Diseases Act
Section 9

Land Act
Section 36 - 39
Section 61 - 67

Land Registration Act
Section 91 - 96

For Companies, Know who has the capacity to sign the document

For Minor, Know who can sign on his/her behalf? How documents should look like? With or beneficiary for lady to sign?

ACADEMY
PAGE NO
DATE

What if you are dealing with a PERSON OF UNSOUND MIND? Who will sign on his/her behalf?
Read The Mental Health Act s. 9, Petition by the Court

What does the Land Law says?

Issues of power of Attorney? Has it been filed in accordance with section 96 of Registration of Documents Act?

If the Company is selling the Landed property then there should be a BOARD RESOLUTION

What if you are dealing with Registered Trustees under Trustee's Incorporation Act?
Read the Law and know who should sign.

You should obtain CONSENT FROM ADMINISTER GENERAL.

REQUIREMENTS will change depending on the nature of the client. Board Resolution & MEMART for Companies. Consent of AG even before Notification, for Registered Trustees.

DOCUMENTATION

1. Sale Agreement – LF No. 38
2. Transfer Deed – LF No. 35
3. Notification – LF No. 29
4. Application for Approval – LF No 30
5. Spouse / Consent / Affidavit / Board Resolution and others And

} General, there might be additional documents.

Per Municipal Council, who give Approval.

SPOUSE CONSENT

Scenario:

Inherited the property recently and wanted to dispose the property. Do we need a Spouse Consent.

You have Spouse Consent or Affidavit

He must swear an affidavit that there is no one who has an interest in that property.

There shall be an affidavit which will state your facts.

SCENARIO 2

Baba alikuwa na property yake kwa mujina yake Mke wake akafariki. Mke hakuwa na property registered under her name. At a certain point in time baba akataka kuuza property. Mtoto wa kiume akaenda baba asiuze kwa kusema akiuza watarithi nini.

They came to my office. Father said all are his properties. I asked a little boy. I asked a phone from him and he gave me. Nikauliza is this your phone he said yes. Where are other phones, he said he sold, so I asked why is he preventing his father from selling the house (property):

I advised the old man to proceed with the sell of the properties. I told the young boy to go and find his properties.

ACADEMY
PAGE NO.
DATE

OTHER DOCUMENTS

1. Proof of Citizenship
   In case of individual
   Know the implication of 19(2) & 20 Land Act

2. Passport Size photo

3. MEMART & CERTIFICATE OF INCORPORATION
   In case of Companies

4. CONSENT ADMINISTRATOR GENERAL
   In case of Registered Trustees.

CONCLUSION

- Conveyancing in Tanzania is mostly done by Lawyers for they know the Law and the whole transfer process among many other reasons.
- Although the process appears to be simple it can be quite intimidating because of the Large amount of paperwork involved and bureaucracy.

Land forms are there for different transaction
- Mortgage
- Lease
- Transfer
- Exchange
-

Know the appropriate form according to the facts and requirement of your scenario.

→ They should be witnessed by Authorized person (Advocate)
Customize all the forms ← they are standard forms.

How about Non-profitable Organization from FOREIGN COUNTRY, Do they under the same mechasism to TIC or not?

Read section 19 (3) of the Land Act

The process will not be that of TIC

Does non-profitable organization own Land in Tanzania?
ANSWER;
Subject to section 19 (3)

TRANSMISSION

Administrator of Estate is not the owner of the property

So he will be registered just as a Legal personal Representative.

Read section 67 of The Land Registration Act

A foreigner can be registered as such but you cannot ~~Register~~ assent to foreigner under section 68 of The Land Registration Act.

S. 67-71 of The Land Registration Act.

⟹ Read also on Matrimonial Property (ie,)

ACADEMY
PAGE NO.
DATE 22/04/2025

ISSUES FOR CONSIDERATION IN SALE ~~AGREEMENT~~ & DISPOSITION BY OPERATION OF LAW

Questions:

1. Create a flow chart on the process of creation and perfection of a Mortgage

2. Draft documents which are required for perfecting a Mortgage

SELF - ASSESSMENT QUESTIONS

(a) How is a Mortgage created?

(b) What if the borrower is not the owner of the land is owned by a third party?

(c)

ACADEMY
PAGE NO.
DATE

JOSEPH MASANGULA →

CREATE A FLOW CHART ON THE PROCESS OF CREATION AND PERFECTION OF A MORTGAGE

1. Negotiation
2. The borrower to present the Title Deed
3. The Lender to verify the Title Deed presented by the borrower
   - To see if at all the Land is owned by two or only one.
   - To know if it is a matrimonial property
   - Or to see if at all spouse consent is required
4. Preparation and Execution of a Mortgage Deed
   - This means that

The above are if applicable for natural person.

5. Payment of Stamp duty
6. The Mortgage has to be registered
   S. 41 of Land Registration Act
   If not registered then you be at risk to lose your rights

Coming to a Company

Here it is important to have a Board Resolution to agree on taking Loan

The other procedures follow as normal.

The Company should also register the Mortgage with BRELA

ACADEMY
PAGE NO
DATE

JOSEPH MASANGULA →

CREATE A FLOW CHART ON THE PROCESS OF CREATION AND PERFECTION OF A MORTGAGE

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The above are if applicable for natural person.

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Coming to a Company

Here it is important to have a Board Resolution to agree on taking Loan

The other procedures follow as normal.

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ACADEMY
PAGE NO.
DATE

DOCUMENTS REQUIRED

1. Mortgage Deed
2. Spouse Consent / Affidavit / Board Resolution
3. Mortgage of the Right of Occupancy
   Land Form No. 40
   Section 112

HASSAN KIMELA,

Before Execution of the Mortgage Deed you should do DUE DILIGENCE

Because if you do not do it, you may face difficulties during registration of Mortgage

Also, VALUATION OF THE PROPERTY, this is the most important in security.

You must valuate so as you can be able to recover the Loan in the event of default.

REMARKS
PAGE NO.
DATE 29/08/2025

Advocate Lukiko

PRACTICAL ASPECTS OF MORTGAGE REGISTRATION IN TANZANIA

Mortgage - Go and read the Land Act

THINGS TO COVER

- Applicable laws
- Procedures
- Documents
- Rejection of registration
- Default
- Miscellaneous
- Conclusion

Definition,

Read S. 100A - Transfer of interest of immovable property offered as security against a debt.

A Mortgage is actually made up of two major parts ie the Loan (facility) agreement and security (collateral) agreement / Deed.

A MORTGAGE MADE WITH TWO DOCUMENTS

Mortgage is a security Agreement which goes together with the Loan Agreement

1. Loan Agreement
2. Mortgage Deed

Mortgage does not exist on its own. There has to be loan to have a Mortgage.

ACADEMY
PAGE NO.
DATE

We have:

Mortgagor (Borrower) & Mortgagee (Lender) } read the definition in the Land Act

The Law Protect the Mortgagor under the EQUITY OF REDEMPTION

Mortgage is a transfer of interest and that transfer is not absolute - S. 116 of LA

There is residual right to redeem property upon settlement of principal sum & interest.

If there would be a clause to prevent redemption of property such deed is invalid.

TYPES

- Mortgage of Matrimonial Home S. 114 (1)
- Customary
- Informal S. 113 (5)(a)
- Lien by deposit of documents S. 113
- Legal
- Equitable

EQUITABLE MORTGAGE

- Owner also orally confirms the intent of creating a charge over his property
- Submit Title Deed to the Lender
- No formal process that is undertaken
- Considered Mortgage in the interest of justice (under

equity).

- No legal procedure is involved in an equitable Mortgage.

Registered / Legal Mortgage

- The borrower has to create a charge on the property
- formal, written process, as a proof of transfer of interest to the lender as security for a loan
- There are necessary legal requirements to create a Mortgage or a charge
- If the borrower repays the loan according to the terms and conditions of a loan agreement, the Title of the property is given back to the borrower

The a law is the most preferable because it is easy to exercise the rights in case of default
Read Section 126 of The Land.

NOTE & READ ⟹ The remedies under section 126 are only exercisable if the Mortgage was a LEGAL/ REGISTERED

The other kind of Mortgage cannot exercise rights under S. 126 unless they obtain order of the Court.

INFORMAL MORTGAGE

Executed in writing, there has to be written undertaking with intent to charge the property to secure the loan.

⟹ This is very common where the Land in question is Unregistered Land. The Borrower has No TITLE to Land

Read S. 113(5) b)

Here the difference with Equitable Mortgage is that the Mortgagor execute the NOTICE BY DEPOSIT OF TITLE TO MORTIGAGEE which is registrable under Cap. 334

Again, the registration of NOTICE BY DEPOSIT OF TITLE can not warrant to benefit the remedies under Section 126.

Here no Mortgage Deed is Executed.

APPLICABLE LAWS

Mortgage is governed by:-

1. The Land Act
   In case of Mortgages of a Granted Right of Occupancy

2. The Village Land Act
   In case of Village Lands - Customary Right of occupancy.

Procedures of the registration are different also.

Remember that, register of the Village Land is kept at the District Level.

Registrar of Title keep Title over General Land (GRO)
Registration of Mortgage under Village Lands is done at the District Level.

ACADEMY
PAGE NO.
DATE

One page CRO attached with Dogtau la kumbukumbu la Andiki y. kimila"

Conduct search to know If there be any Incumbrances.

3. Land Registration Act [Cap. 334 R.E 2019]
Mortgage is a Compulsory Registrable instrument

4. Registration of Documents Act [Cap. 117
Here we register all which are not under Cap. 334

5. The Mortgage Financing Act, 2009
The provisions of this Law has been fused into the Land Act. So no need to carry the this Law.

6. The Companies Act, Act No. 12 of 2002
A companies can own Land and just like an individual it can Mortgage Land

And in the process of Mortgaging Land, there are things to be observed

7. The Cooperative Societies Act
8. Because this also create entities with ~~Corporate~~ Corporate personality just like a Company

8. The Law of Marriage Act.
Third party interest by virtue of Matriage, Create interest to the Matrimonial Immovable Property. Spousal Consent is required. S. 58 & 59 of The LMA.

ACADEMY
PAGE NO.
DATE

There are requirements to be observed by the Company which has also to be observed by the Cooperative Society registered under the Societies Act.

PROCEDURES TO REGISTER MORTGAGE IN TANZANIA

1. Preliminary Stage
   - The Mortgagor has to find a proper Creditor (Lender)
   - Consider Loan interest rate, type of security required by Creditor and other "Know Your Client (KYC) issues. DUE DILIGENCE
   - Approach the Creditor to exchange Valuable information Concern Mortgage transaction.

$$\text{Interest} = \frac{PRT}{\uparrow}$$

Interest on the Principal amount
Interest on the reduced balance
└ Reduced balance (RT)

Look also on the flexibility of the terms and Conditions of the Loan.

Get these information from the Bank. Know the Lender

Once you are satisfied then APPLY FOR LOAN

Loan.

For THE BANK they will do CREDIT APPRAISAL and that is what we call "KYC"

Know your Client

They will ask you to provide a lot of information.

They will investigate you. They will do and Conduct DUE DILIGENCE

Also they do and check you previous CREDIT REFERENCE BUREAU - Accessible by all the Banks.

→ SONGESHA - TIMIZA - KAMILISHA make sure you pay

The Bank cannot lend you if you have no Financial Muscles to pay. Remember B.O.T regulate the Issuance of Loan. Even Bank do not lend one with bad character in as far as taking loan is concerned. This tells alot about the character of the borrower.

2. Engagement stage
The prospective Mortgagor obtains all documents required by the Creditor E.g ID, Introduction Letter from Local Authority, Land rent clearance, Property tax from Municipality, Title Deed etc

ACADEMY
PAGE NO.
DATE

3. Valuation stage
- Is the process of examining the property to ascertain market value
- Valuation reports must be verified by govt valuer

It should be more than 125% - B.O.T

We have:-
- Fair Market value
- Forced sale value
- Discount sell value

} 75% of the Market price

4. Drafting Mutgage Deed
- Is a legal Document that set out terms and conditions of Mutgage
- It also stipulates rights and obligations of the parties

There is however Approval stage with in the Bank.

Here the Facility (Loan) Agreement will also be prepared,

Let say the Deed should be

5. Registration stage
- Must be initiated through formal application to the Registrar of Titles
- Submit all required document (Mortgage Deed, Valuation Report, Spousal Consent, Form 29, 54H e.t.c
- Pay all necessary fees

Company to register a charge to BRELA - once

You get the Certificate of Registration of Mortgage then you proceed to register Mortgage with the Land Office.

1. Certificate of Title
Confirm Validity, Terms and Conditions, Encumbrances

2. Receipts
Land rent, Property tax, other utilities bills etc

3. Mortgage Deed, in Triplicate
- Property executed deed, (attested, stamped in sealed and dated).
- Confirm form & Content

4. IDs, Passport size photo
- Copies must be certified Current passport size photo of each party to the transaction

5. Valuation report

6. Land Form No. 29
- Notification of disposition (signed and dated)

Previously Form No. 30 was also required. So in 2008 the Approval was removed.

7. Form No. 54 H
Declaration that the Money will be used in Tanzania

Read the Amendment to the Regulations - 2021

8. Spousal Consent / Affidavit (in case no spouse) / Board resolution if Company

9. Certificate of registration of a charge [Section 59- Cap 134)
Not apply if the Mortgagor is a Company or Cooperative Society.

10. Any other Document
- The registrar may require any other document depending on the situation at hand
- Eg Consent from beneficiaries if the property is registered in the name of an Administrator
- Affidavit as to signature / Name / Deed Poll / Power of Attorney etc

REGISTRATION OF MORTGAGE; REJECTION

For the purpose of filing you have to notify already. Eg.
- Improper Execution of Documents
- No spousal Consent
- Variation of names
- Date of execution
- No attestation by Advocates
- Signature differences

Be careful when drafting documents.

DEFAULT

When the borrower of a Legal Mortgage default to pay the loan :-

1. Send 14 days Notice upon default at 1st Instalment or 2nd Instalment

2. You may call for a meeting

3. Discuss all possible solution

4. Copy notice to Registrar of Title (RT)

Send Statutory notice (60 days) upon default at 3rd Instalment (LF M. 54A)

└ Mortgage Financing Regulation go & read

⟹ If o at this stage where borrower runs to the Court for Injunction

Sixty days expiration, the Bank appoints an Auctioneer

Auctioneer will issue 14 days Notice to the Public

POWERS OF THE MORTGAGEE

Section 126 of Cap. 112

i. Appoint Receiver
ii. Lease of Mortgaged Land / Sublease
iii. Enter into possession of Mortgaged Land

} By ordering the Court

iv. Sale Mortgaged Land (By Auction or Private Contract) - 134 (1) (d) - Highest bid

In the other circumstance the Mortgagee may sign what is known as SECURITY SHARING AGREEMENT

But there is if there is no security sharing agreement then there will be the principle known as "THE FIRST LENDER START"

→ Read also section 133 - Mortgagee when selling the property should sell at the reasonable price if not it will be a ground of challenging that Auction.

CHATTELS TRANSFER ACT, Cap. 210

- Deals with registration of chattels Mortgage instruments over movable property such as Machinery, vehicles, Aeroplanes, ships, and other qualifying chattels.

Registrable under Cap. 117

- To be registered within 21 days

- Mortgagee has no automatic right of sale. May only sell the Mortgaged property with the Leave of the Court
- Chattels Mortgage is not applicable to Corporate Mortgagors. The Company charge these by way of DEBENTURES (Movable property)

Immovable
Ardhi - Mortgage

Immovable < Debentures / Chattels Mortgage

DEBENTURES

Specific Debenture - Identified property

General Debenture - Being not identified

Giving all properties. When you have bad check you will have in the later stage

SALE OF THE MORTGAGED

Tripartite Arrangement

Bank
Borrower
Purchaser

} Purchaser takes the loan

or the property is sold, the money is paid and then the mortgage is discharged

It can also be for private contract

If you are not the owner of the House - It is called Third part Mortgage

What will be required is only an Affidavit if one leaving collateral and Spousal Consent of Third party

THIRD PART MORTGAGOR

ACADEMY
PAGE NO.
DATE 18/08/2020

MR. SANGA

LEASES

Qn:
① The provisions in leases and their Relevance
② Essential elements of the Lease
③ Formalities for creating a Lease

MTABUZI PRESENTATION

PROVISIONS IN LEASES AND THEIR RELEVANCE

In the Land Act

Section 2, definition of Lease
regulated by the law and Lease Agreement

Also definition of LESSOR and LESSEE
Landlord Tenant

Section 62 of The Land Act
Provides for Instrument of Disposition which lease is also there.

Section 80(2) read together with S. 54(1) of Land Registration Act

S 80(2) - oral and written Leases permitted

S. 54(1) - No lease shall be registered unless exceed 5 years

ACADEMY
PAGE NO
DATE

Classes of Leases
S. 78, 79 and 80
Classes of Leases depending on duration
- For fixed time - 78 of LA

- Periodic leases - 79 of LA
  - No terms specified - Month to month, week-week
- Short term leases - 80 of LA

Section 83(1) and (2) read together with Section 81 of LA provides for another class of Leases depending on nature
① Future / Revisionary Leases
S. 83 (1) and (2) of LA

② Lease terminating on the occurence of future events, S. 81 of LA

Section 88 and 89 of the Land
Convenants of Lessor and Lessee

Section 89 (1)(i) of Land Act
" Delegatus non-potest delegae

JOHN CLEMENT
S. 103 (1) of The Land Act - Termination of Lease for Non-payment of rent

But there are conditions under S. 104 of Land Act - Notice

S. 105(2)(b)(iii) Notice not less than 30 days.

S. 10, 11, 12, 13 and 14 of the law of the Contract Act (Cap 149 R.E 2019)

⟹ Section 14B (a) and (b)

Once this property is to be transferred to another person while the property is under mortgage,

Should obtain the consent

Section 106 – Consequential provisions relating to notices under sections 104 and 105

Section 107 – Application for Relief

Section 109 – Remedies for breach of covenant
In lieu of Notice of Intention to terminate

Section 110 – Unlawful eviction

Section 59(1)(a) & S. 98(3)(a)
Talks of consideration

Which is payment of rent

RELIENCE: Contra obligation

Section 79(1)(c) – TENANCY AT WILL
Terminated under two circumstance
(i) Agreed
(ii) You are still there but

Section 82(1) – Lessee remaining in possession after

Termination of Lease without Consent of Lessor

Tenancy at Sufferance

⟹ LAURENCE MAGESA VS FATUMA OMARI, Civil Appeal No.

SANGA
- S. 49 of Land Registration Act Registration
- S. 51 of LRA Non-registrable Leases
- Financial Leasing ~~Act~~ No. 5 Act of 2008
- Banking and Institution (Financial Leasing) Regulation of 2022, G.N. 575 of 23rd September, 2022
- Check Village Land Act as well as how it regulates Village Land, rent
- Part IX of the Land Act also read
- S. 77-87- General provisions
- S. 88-93- Convenants
- S. 94-98- Transfer
- S. 99-1107- Remedies

Qn 2: Essential Elements of a Lease

(i) Parties (Lessor & Lessee): S. 78, S. 2

(ii) Duration (Fixed time of the Lease) S. 79, 80 of LA

(iii) Consideration (Rent)

(iv) Exclusive Possession

(v) Formality e.g. - Contract of lease, Registration of 5 years term lease

Qn 2: ESSENTIAL ELEMENTS OF A LEASE

1. Rights and obligations
   S. 88 and 89 of Land Act

SANGA — ELEMENTS

1. There must be a fixed duration
   Start and end date
2. Exclusive possession
   Right to use the Land with exclusion of all others
3. There has to be payment for the occupation
4. Reversion —
   Land reverts back to the Landlord after expiration of the Lease term.

Question 3. Formalities for Creating a Lease

HASSAN KIMELA

S. 54(1)(a) of LA -

1. Whatever disposition shall be in writing
2. Parties have to execute a Lease Agreement

   Now it is Land Form No. 55

3. Registration

   Two Categories of leases
   - Exceed 5 years
   - Do not exceed 5 years

   } Section 54(1)

DOCUMENTS TO BE SUBMITTED

→ Proof of payment of fees

REVERSIONARY LEASE

Executed today and will take place in future
Tenant will take place in the future
S. 55 of The Land Registration Act

S. 83 of The Land Act
Should not exceed 21 years

~~S. 57~~ Interest Here he will
Land Registration Form No. 27
Section 78(1) of The Land Registration Act

ACADEMY
PAGE NO.
DATE

MZEE UKEO

1. Drafting of Lease
2. Execution
3. Registration

Payment of fees and duties
- Stamp duty
- Registration fees } paid to the Registrar of Titles

- Withholding Tax
  10% of the rent

SANGA

To Lease has to be drafted
There should be terms therein
Exceeding five years it must be registered
Fee should be paid as well

⟹ Tenant may use a registered Lease to Mortgage or Subpoena

DISTINCTION BETWEEN LEASES & LICENCES

1. Lease grant exclusive possession of the property
   Even the Landlord, has limited access
   BUT
   In Licence permit use without exclusive possession

2. Lease creates an interest in land WHEREAS the Licence only create personal rights. It is Contractual

3. The typically requires formal documentation WHILE LICENCE can be created informally

4. The LEASE binds successive landlord and purchasers while the LICENCE does not bind new owners

5. The LEASE offers strong statutory protection while LICENCE offers limited statutory protection.

6. In LEASE a Tenant has a place but/has own WHILE in LICENCE the Landlord maintains exclusive access right

~~AG~~ ALLEN VS LIVERPOOL ~~COUNCIL~~ [illegible]

When drafting a lease make sure that the Tenant has any claim

⟹ Take note of statutory provisions and common law principles

When drafting consider fact Tenant should have a full covenant
- So as to
  Enjoyment
  Payment of rent

SUB-LEASING

Lease has to be restrictive on sub-leasing.

Section 64 - 1925 - Property and Conveyancing

LEASE SHOULD HAVE WAYS TO COME TO AN END

- Mutual Agreement
- Unilateral Notice or Notice
- Breach and Forfeiture
- Frustration
- Expiration of Time.

S. 106

- Lease function as contractual as it is a contract and Conveyancing as it creates property rights

- FUTURE LEASES
  21 years and not more than that

- RENT
  - Rep can discuss (Parties themselves).

Go through Types of Leases

- Commercial
- Farm
- Residential Lease
- Factory Lease

ACADEMY
PAGE NO.
DATE 23/05/2025

Mr. LAIZER

CONDOMINIUM PROPERTY MODEL

Self - assessment Questions:

1. What is a Unit Property?
2. In what circumstances can there be unit property?
3. How may the establishment of a Condominium under the Unit Titles Act be advantageous from Ngugi's point of view?
4. Consider and explain to the how common areas are dealt with under the Unit Titles Act
5. What happens to Ngugi's existing registered Title (to either plot 1 or Plot No. 2) when the Registrar gives effect to the registration of the Unit Titles?

OTHER OBJECTIVES EXPECTED;

1. Advice on the development of a Unit Title Property
2. Advice on the Maugement of the Unit ~~Title~~ property
3. Dispose a Unit property

Maugement

Section 35(1) - (5)

Formation of Association - by not less than 5 person - Corporate

Association formed by people residing there

Less than five then owners to register to the Registrar by laws on the use of common areas and Management of

Association shall have - perpetual succession
Common seal
Sue or be sued.

the Unit.

Registration of the Unit Plans

Question: DEVELOPMENT OF UNIT TITLE

- Application ~~Regulation~~ of UTA
  Unit Title Form No. 3

~~Form No 10b~~

Accompanied by:
- Original certificate of Title
- Unit Plan (Four Copies)
- Certificate Form of the Local govt which is Unit Title Form No 10b
- ~~Unit Title~~ certificate from registered surveyor Form No. 10a
- ~~Part~~ Unit Title Form No 10c (Registered and certified architecture)
- ~~Plan~~ Statement of the Common areas
- Fees - stamp duty & registration fees

2. Registration of Unit (Issuance of Certificate of Unit Title
   - Unit Title form 4 (2 copies)
   - Unit Plan (2 copies)
   - Two passport size (For natural persons)
     For Company signed with common seal & by two Directors
   - ✓ Fees - Registration & Stamp Duty

Procedures above are done by

MANAGEMENT OF UNIT TITLE

There are two ways:

1. By Laws
   If the number of unit owners is below 5 the developer will register by Laws (S. 75(4) UTA, Regulation 12(10) of UTR

2. By ~~Law~~ Association
   Unit owner from 5 & more form an association (S. 75(2) of UTA, Regulation 13

Management of ~~Association~~ Unit Title Property is done through Regulation 10(5) of UTR

DISPOSITION OF UNIT PROPERTY

Provided under Part IV of Unit Title Act

S. 29 of Unit Title Act
One to dispose should be the owner

Sale S. 29 of UTA - Sale by Developer

Sale S. 30 of UTA - Sale by owner

Lease - S. 31 of UTA

Inheritance - S. 32 of UTA
Subject to Land Registration Act
S. 67 of LRA

Mortgage - S. 33 of Unit Title Act.

CREATION, MANAGEMENT & DISPOSITION OF UNIT TITLE

Read the preamble of the Unit Title Act

- There must be a building
- Divided into blocks, sections
- And these sections, a unit are owned individually

- Means, Each unit is a different property which can be owned or co-owned individually.

- Then If you have the Unit Titles, the law allow these Units with owners to be Given Titles.

→ - Once you have Units, owners and Titles then the law provides for Management and Dispute Resolution arising from the use of Common areas

- Also, the Law provides for the use of Common areas by occupiers.

- What is Unit Title

WHERE DOES UNIT TITLE COME FROM
There is a Developer. Who is he/she?

THE PRACTICAL ASPECTS OF UNIT TITLE'S CREATION & DISPOSITION

- Introduction
- Law
- Procedures of registering Creation Unit Title
- Registration requirements
- Disposition

INTRODUCTION

What is a unit property
S. 5 of UTA

It is a section of units together with the land on which they are located and all real rights existing in their favour.

There is no way you cannot share security, parking, entrance gate e.t.c so these are called common areas.

E.g Msekwa Unit,
Bomani Unit
Seminar Rooms Units
Multipurpose Hall unit
E.t.c

Think that everyone wishes to have Unit Title - Then each individual will have Unit Title
But How about Common areas?

ACADEMY
PAGE NO
DATE

What is Unit.

Means portion of the property which is owned by a specific owner or co-owned for their exclusive use by owners

Sharia ya umiliki wa sehemu Fulani jengo.

The potion is a distinct property which exist on its own.

LAWS GOVERNING UNIT TITLES

- Land Act, 1999
- The UTA, 2008
- The LRA, Cap 334
- The UTR, 2009

The list is not exhaustive.

ISSUANCE OF UNIT TITLES

- Processing and Registration of Unit Titles pre-supposes availability of a Certificate of Right of Occupancy

- Dvt conditions are required to correspond with the intended dvt

- Building permit.

Unit Title is not a substitution of Land Act, The Plot should firstly have GRO with development condition that to create a Unit Title or you have a GRO for RESIDENTIAL PURPOSE. Is it possible to Create a Unit Title? It should be in conformity with

The condition for the use of Land.

You should say it is "HOUSING STATE" and not one "HOUSE OF THE FAMILY"

You to build, you must get PERMIT

CREATION STEPS

1. Application for Registration of Unit Plan (UTF Form No. 3
   Form No. 3
   Should engage an Architect to prepare plan

- Original Certificate of Title
- Unit Plan (4) Copies
- Certificate from the Local Govt UTF No. 10B
- Certificate from the registered Land surveyor UTF No. 10A
- Certificate from the registered Architect. UTF No. 10C
- Statement of Common Areas

To know that the Expert was involved
To prove that the Building permit was Issued
Just assurance to the Registrar

To confirm boundaries of the surveyed Plot. To reduce possibilities of conflicts in the future.
- He will confirm that the building is within the boundaries.

Confirm and affirm that the plan has been prepared clearly without any problem.

FEES FOR REGISTRATION

(a) A unit plan with 5 to 20 units
- Registration fee ☐ Tshs. 150,000/=
- Stamp duty Tshs. 3500/=

(b) A unit plan over 20 units
- Registration fee ☐ Tshs. 250,000/=
- Stamp duty Tshs. 3,500/=

2 Apply for Registration of Unit / Issuance of Unit Title
- Application for Registration of a Unit UTF No. 4 (2 Copies).

- Accompanied by two plans of Unit for each Unit.
You apply for a specific Unit.

NOTE: In case of a natural person passport size photo of the Applicant must be affixed on the application but if it ☐ a Registered Company in attestation clause there should be a Common SEAL of the said Company.

You can apply all together if they have been CONSOLIDATE

Registrar will ☐sue CERTIFICATE OF UNIT TITLE for each Unit
He one who apply at this point ☐ a DEVELOPER
⇒ Remainder Building - Masaki →

FEES

- A unit Plan of 5 – 20 units The: 15% on

- A unit plan over 20 units

CONSIDERATION

- Proper Title Deed
- Check correctness of your Application
- Relates your application with Unit Plan
  Each unit has a name- to be specific on what you apply. Describe that your unit.

ISSUANCE OF CERTIFICATE OF UNIT TITLES

Regulation 7- Registrar will issue - It has the same status as CRO (Right of Occupancy)

Read Section 15

- It has the same status of or as Certificate of Occupancy such as:-
  - Subject to disposition
  - Exclusive ownership

DISPOSITION OF UNIT TITLE

It has been provided under S. 28(1) of LTA

The section is taking you back to the Land Act

"28 (1) Subject to the provisions regarding the dispositions affecting land under the Land Act, each unit of the property constitutes a distinct object of real property and may be the subject of disposition by the owner in whole or in part."

No difference when you are dealing with the disposition under the Land Act (Certificate of Right of occupancy) and under the UITA (Certificate of Unit Title).

FOR THE PURPOSE OF EXAM:

Advice client who wishes to buy the Unit Title

ANS

Means unit Title has been created so would your advice differ from the one who wishes to buy a Land under GRO?

⇨ Things to consider when you want to buy a Unit Title are the procedures of Disposition of Unit Title;

Therefore, disposition of Unit Title is subject to provisions of the Land Act

If disposition of UNIT TITLE is the same as that of Land Act therefore, No FORMS for Disposition UNDER UITR

⇒ Therefore Land forms under Land (Forms) Regulation will be applicable

Checklist for Transfer

1. Transfer Deeds (In triplicate)
2. Sale Agreement (In triplicate)
3. Application for approval of disposition filled to the Commissioner for Lands, (In duplicate).
4. Notification of approval of disposition (in duplicate)
5. Valuation Report
6. Capital gain Clearance Certificate from TRA
7.

MANAGEMENT OF THE UNIT PROPERTY

Reg S 35 - 66 of UTA

- Establishment of an association S. 35
- Function of Associations
- Meetings of Associations
- Appointment of Managing Agent. By Laws of the Association

BY- LAWS

So, before forming Association there should be by-Laws registered to the Registrar by Developer

Managed by BY LAWS if the number is less than five (5) - Section 35(4) of UTA

ASSOCIATION

(a) Association Constitution (15th schedule) of UTP

(b) Association by-Laws (

DISPUTE RESOLUTION

- S. 67 - Tk UTA & S. 167 of Land Act
  ⇒ Courts
⇒ Suit for and against Association
⇒ Dispute among the members
  ⇒ Mediation

1. Unit Title is Managed by Association
2. If you opt to buy you automatically become member of Association then should obtain the Copy of the
3.

4. Issue of Dispute among members

5 Inquire whether there are cases registered there in the Court about the Association

Advise your Client based on the Management and Status of the Association

6. Inquire whether there are Temporary Tenant.

7 Inquire if there are development plans.

Inquire the by-Laws

Questions:

Rationale behind 33, 66 and 99 years

Ans:

It has to do with planning Issues

Once you go to renew, you will be forced to change - Residential to Commercial residential

ACADEMY
PAGE NO.
DATE

Summary

1. OBTAIN GRO
2. ACH. DRAWINGS - Certificate of UTF 10C
3. CERTIFICATE FROM REG. LAND SURVEYOR UTF 10A
4. APPROVAL - LOCAL GOVERNMENT AUTHORITY UTF 98
5. APPLY FOR REG. UNIT PLAN UTF No.3
6. APPLY FOR UT - - - UTF 4.

When does the Developer Granted Right of Occupancy (Certificate of Right of Occupancy)

- It will be surrendered to the Registrar

OR

- Remain in the custody of the Association

And

- It will have a cease to transact

And

- You will only transact using Certificate of Unit Title.

Question:

Can CRO change to GRO?

If you are late to Renew, what happens?

GRO is issued into the Planned Area.

- You will be compensated only on the Improvement and not on right to own Land.

ACADEMY
PAGE NO
DATE 23/05/2025

Appollo Laizer again - - -

TRANSMISSION & DISPOSITION BY OPERATION OF LAW

(Transmission by Operation of the Law)

All transaction emanating from registered Land, Transmission is one among the disposition.

It is not a normal disposition.

Normal is always Inter vivos — their must be two parties - there must be an Agreement.

We have transmission as the other type now

The Land Registry has been dealing with Land registration - It is the government Authority vested for that purpose.

Why registration?
<i> It guarantees the right of tenure
<ii> Protect you from third party intervention
<iii> Guarantee ownership.

The OFFICE OF REGISTRAR OF TITLES
- Established under S. 3 of LRA
- Headed by the Registrar assisted by others
- Within the Ministry of Lands and thus is office as a unit or Department

- We get also Commissioner for Land and Survey & Mapping department where we get TITLE DEED.

The RT Unit interact with :-
<i> Commissioner for Lands
<ii> Survey and Mapping Department

* The results of processing - the certificates of title and other Legally...

FUNCTIONS OF THE OFFICE
1. Administration of Land Registration Act, Cap. 334
2. Unit Titles Act
3. Registration of Document Act, Cap. 117
*4. Chattel Transfer Act, Cap. 210

RT is a custodian of the above Laws.

Registrar of Titles is also a Registrar of documents.

TRANSACTIONS UNDER CAP 334
- Transmission by operation of Law

Registrar of Titles can act as a QUASI-JUDICIAL BOARD - decision appealable under S. 102 of the Land Registration Act

Documents concerning Land should be registered in the Land Registry office to the RT.

Transaction under Cap 210
- Chattels Mortgage Instruments

Nature of Interest in Land

- Deemed
- GRLO
- GRO - S. 22 LA
- Derivative Rights.

Go through probate Laws & Companies Act e.t.c.

How To ACQUIRE INTEREST OVER THE LAND

- Grant
- Purchase
- Gift
- Assignment < Lease agreement aka Assign. E.g. Umoja Ltd vs Kampa Investment.
- Transmission

TRANSMISSION

- Disposition of Land other than normal transfer which result to change of ownership.

- It can originate from Voluntary or involuntary action by property owner ← Company
  E.g. Death, Change of name, failure to liquidate a Mortgage.

Normal transfer: Always voluntary.

What happens if a person die?
What happens if a company changes its name?

You go with transmission

What happens if you fail to pay debt?

Your property will be sold in Public Auction

And the Highest bidder will go to change the ownership by transmission.

⟹ Now, Part VII of Land Registration Act
NOTE give two categories:-
<i> Transmission by death
Ss 67 - 70 of LRA

<ii> Other transmission
Ss. 71 - 72 of LRA

SECTION 67 of the Land Registration Act

Provides for REGISTRATION OF LEGAL PERSONAL REPRESENTATIVES

REQUIREMENTS:
i. Prescribed Form - Form L.R 20
ii. Copies of the ~~Register~~ Letters of Administration or grant of probate

Part VIII of the PAEA is relevant here.
And 4th Schedule of MCA

→ He will be registered as a LEGAL PERSONAL REPRESENTATIVE of the deceased in place of the deceased.

Upon registration, the ownership has changed from the Deceased to the Legal Personal Representative, That is Transmission.

- Registration of Legal personal representatives s.67
  - Form LR 20
    Accompanied by:
    (i) Probate or Letters of Administration

SECTION 68 OF LRA

- Dispositions and assents by Legal personal representative

No disposition shall be effected by the Legal personal representative of the same has not been registered under the name of personal Representative.

Here it is Disposition and Assent (to the heirs)
Assent (distribute to heirs)

Any Assent shall be in the prescribed Form

That is LR No. 22

Failure to register: PHILEMON VANAI SAITERU MOLLEL
VS WILLIAM TITUS MOLLEL (THE

ACADEMY
PAGE NO.
DATE

ADMINISTRATOR OF THE ESTATE OF THE LATE TITUS ARON MOLLEL & ANOTHER, CIVIL APPLICATION No. 494/02 OF 2021

The property sold without registering under the provisions of section 69 of LRA

The Administrator Later on died - That is when William Titus Mollel was appointed to be the administrator of the estate of the late Titus Mollel.

He started to collect properties of the deceased including the propety developed by PHILEMON VANAI SAITERU MOLLEL

The case was heard and Philemon lost the case. (CAT)
He can holding it as per section 68 of the LRA

SECTION 69: REGISTRATION OF SURVIVOR OF JOINT OWNERS

Must be applied in prescribed Form No. L.R 24

Read also the provisions of section 159 (4) (b) of the Land Act [Cap. 113 R.E 2019]

Accompanied by:-

. Proof of Death - from RITA

. s159 (8) provide Spouse to be joint occupiers, other with the Leave of the Court.

Two types - Upon death of one owner you will invoke Section 61 of LRA

Application in the Selection of one who dies

Section 152 (1) provides two types of ownership
- Joint tenancy
- Tenancy in common

Joint tenancy allowed only between spouses.

Implication of registering the land under joint tenancy is that upon death, the rights pass to the survivor

If not spouses, you should obtain leave of the court so as you can be Joint owners.

If it is occupied in common and the co-owner dies, invoke Section 62 of LRA and not 61 of LRA

But for the Joint owners, invoke 61 of LRA and not Section 62.

Use under Section 61 does not need Probate & Administration letters.

If a Joint you go to the Registrar of Titles and the deceased be deleted from the Register.

You will accompany death Certificate from Births & Registration (Vizuri na ofa)

When advising the client, be upon that the property under joint occupancy will be left to the survivor only.
In joint ownership there is no DIVIDED SHARES
It is UNDIVIDED SHARES

KNOW THE IMPLICATION of JOINT & COMMON to CO-OCCUPANCY

Section 159 (4) of Land Act [Cap. 113 R E 2019] provides the consequences of Joint occupancy:

(i) No transfer alone - should be done by all
(ii) Right / The Doctrine of Survivorship
(iii) Transfer may be intervivo to each other by the occupier

Ownership changes from Joint occupier to Sole occupier soon after deletion.
Type of ownership changes.

SECTION 70 of LRA - CANCELLATION OF LEASE DETERMINABLE ON DEATH

You enter into lease, then there is a clause stating categorically that upon death the lease will terminate

None should be express provision/clause. If no such clause, the lease maybe transmitted to the other person.

- Granted
- Issued under the provisions of any Written Law
- By operation of Law not herein otherwise provided.

E.g - Arusha Declaration - Properties were Nationalized

Law may change to trigger transmission

ORDER:

- President

E.g Muslim University of Morogoro - The place was of TANESCO, President advised to be of Muslim University of Morogoro

They changed by way of transmission

- Court - Can issue Order or Declaration. One wins a case and declared as the owner - It is by way of Transmission.

What amount Matrimonial Property - there was a dispute - And the Court declared the husband to own a property - It is transmission

What about Public Auction and you have the Certificate of sale & order of the Court - transmission again.

CERTIFICATE NAME: Look at Companies changing names - TIGo to YAS by Mixx, how about the properties and they have

ACADEMY
PAGE NO.
DATE

A Certificate of change of name - Again it is by transmission

Again, what happens if a Lady changed a name so as to be married and she had Landed properties - transmission again

- Deed Poll attach

What happens to these children under Guardianship when the Child when turns to be of the Age of Majority? What he will do?

By operation of the Law - Age of Majority

Transmission again.

Also, Where Law school, Mawasiliano? Where did they get the Land?

⟹ TRANSMISSION is not only for Right of Occupancy but also for LEASES, MORTIGAGE e.t.c or even Cases before the Court

Now, here there should be ADDENDUM TO THE LEASE AGREEMENT

CRDB 1999, CRDB LIMITED, CRDB PLC

Name should be changed

ACADEMY
PAGE NO
DATE

INTERESTED PARTY SHOULD PREPARE AN APPLICATION

Form LR 25

It should be by way of statutory Declaration stating the facts which the application is based

Application should properly executed and witnessed

Certified copied of annexures (Eg Court decision, Deed poll, Certificate, Order, etc)

Birth Certificate - for the one attained Age of Majority.

S. 72 TITLE ACQUIRED UNDER ADVERSE POSSESSION

(i) Any person who claims that he has acquired any estate in any registered Land by ADVERSE POSSESSION

(ii) By Reason of any Law of prescription MAY APPLY (Form LR 26) to the Registrar in the prescribed manner for registration of his estate or interest.'

Subject to conditions under S. 72(2)-(5)

WHERE TO LODGE/SUBMIT?

- Registrar of Titles
- Submit the following:-
  - Certificate of Title (if applicable)
  - Application form LR 25 - Affix passport size photo

- Supporting documents
- Proof of Ownership
- Pay fees
  - Stamp duty 1%
  - Registration fee 2% of value sold in Auction
  - So, 0% if just a declared right.

IN TRANSMISSION THERE IS NO NEED OF;
- Notification
- Approval of Disposition
- Transfer of Right of occupancy
- Agreement.

WHAT THE REGISTRAR WILL DO?
- Issue a thirty (30) days Notice

MISCELLANEOUS
- Objection - should be brought with proof
- Prepare your application clear
- Fill correct details.
- Attach all necessary document to support your application

If they do not change or affect interest dont require NOTICE as follows:-
- (i) Deed poll
- (ii) Certificate of sale
- (iii) Change of age of Majority
- (iv) Change of Name.

QUESTION

SAHLAI

- Q: Is - Cancellation of loan determinable on death child form?

Ans: - No all form are free except the above form and charge Title and Loan

Is rejection why High Court?

Ans: Bcoz there are no any court to accumulate the Registration other than the Court.

Practically Is the Deed order that the Transaction not to proceed

Q: I: Mandatoriness of Registration of Deed Bill? Why?

Ans: the has meaning the cause of registration
- Stamp duty you cannot pay it without registration
(Where we provide & Change the Magnet)

- If is not mandatory. It is up to the choice to register or not.

Q: I: Court can skip the Witness

Objection of property - Who give Court a time as file Caveat?

No Capacity: Caveat will be with & Caveat also file a Caveat.

He can control, upon attaining the age of Majority.

But he dies, he is still a Minor, the child will remain to be a child and Guardian will be a decision maker. There is no way.

Title under Guardianship should explain that status of Guardianship.

Land Certificates
S. 28 of The Land Registration Act

- If you have Land Certificate of Title

It will be cancelled after Subdivision

Registration will issue duplicate Title.

Migrate because you must be young & weak relatives - Child to be a Guardian, so the land will remain.

SCENARIO:

A Mzungu owns a piece of land at Siwa, he has a daughter and Filly Mzungu who resides abroad, sometimes in 1998 he wanted to give the property to his daughter who was aged 10 years, daughter and he wanted to be a guardian of the property.

He went to the Registrar and transferred his property to his daughter and was the Title and Title Deed was issued to child via Registrar Mzungu

as a guardian.

Later on, Athuman was facing financial challenges and the only option was to sell the said landed property to his friend KELVIN NYAGOMA at a consideration of 50,000,000/=. The sale was lawfully effected by a standardized agreement and Mr. Kelvin took the sale agreement and put it into his house.

After two years, Kelvin had a wish to ~~from~~ give the said landed property as a ~~gift~~ to his daughter one Marion, as the result the DEED OF GIFT was duly executed and he handled the sale Agreement entered with Athuman, Deed of ~~gift~~ and original Title Deed of the said Landed ~~property~~ in the name of PILLY HASSAN

Unfortunately, KELVIN & ATHUMAN passed away.

It is 20 years now and Marion is proceeding to stay at the place she received as a ~~gift~~ from his father.

And now PILLY HASSAN is back from Abroad and heard that she has property under her name only to find she has no original Title Deed.

She went to Land offices for official search and Confirmed that the Land is still on her name. She is instructed to advertise that she has lost the Certificate of Title and Marion never happened to surrender the Title.

ACADEMY
PAGE NO
DATE

Pilly Hassan went to the local government Authority which is the Local government under the Chairmanship of Ibrahim Musa Mpanchi where the plot is located at Tz extension.

Pilly Hassan finds Mariam inside the Plot i.e to say Mariam has already established her residential home by building a House.

Pilly Hassan becomes angry and she D forcing Mariam to vacate as after that advertisement of Land Certificate of Title she was issued with a DUPLICATE CERTIFICATE

Pilly Hassan is alleging that the Plot D has and in the other hand Mariam D saying She received the same as gift from her Late Father who bought it from Pilly Hassan's Late Father.

Negotiations appears to fail as Mariam D not ready to purchase the Plot again at the current market price.

They came to you as a Conveyancer - A good Conveyancer. Kindly proceed to advise Them only on all raised issues accordingly.

Thank you

Kelvin Ezekiel Nyasani
©2025 45th Cohort.

(iii) - Due diligence
- Location Consent

(iv) Land survey

As per the Land survey Act as per Cap 324

Section 8 of the Act provides to the function which includes

i) To make survey as per S. 8 (2) of the Survey Act

2. Registration of Titles

Established under section 4 of the Land Registration Act [Cap 300 R.E 2019]

To register all disputes as per section 4 (1) of the Land Registration Act

3. Commissioner for Lands

Established under S. 9 of the Land Act

Receive notification of Disputed Land from No. 2 as well as approval for Disputes under Land Tribunal No. 2 of The Companies Act whereas you will be issued with Certificate of Approved of Disputes.

- It will be known as DERIVATIVE RIGHT OF OCCUPANCY, i.e. $L_D(v)$ of LO

- These shall be Environmental & economic Targets

Section 21 of Environment Management Act of 2004.

1. Identify of land
2. Registration of Investment which Capital should be - - - -
3. Application for Derivative Right
4. Verification for Derivative Right
5. Fees should be paid
6. Signing of the
7. Payment of fees
8. Obtaining of Derivative Right
9. Property Tax etc

DOCUMENTS

1. Letters
2.
3. Certificate of Incorporation
4. Proof of board returns

(iv) How to obtain land by a foreigner

⇒ For the light of occupancy applied under the Tanzania Investment Act of 1990

→ Derivative Right Issued by Tanzania Investment of Land

→ Partial ownership of Land is allowed.

⇒ How to obtain Deemation right of occupancy

→ Identification of the land
→ Notice of Deemation right
→ Grant of Deemation right of occupancy

1st Stage
- Letter of application
- Proof of land ownership
- Proof of Nationality
- } Submission for the application to TIC

2nd Stage
- obtaining the Notification letter s. 25 of LA
- Obtaining the control number for:-
  - Payment of Land rent
  - Payment to TIC

3rd stage
- Sign of the Deemation Right
  - Payment of fees

RECAP

(i) Laws and justification
(ii) What are the duties of the Advocates if engaged by the all parties.
Ought to be responsibilities. ← (This is very important practice carried out in the course)

What are the ethical challenges

- Conflict of Interest.	How to overcome
- Competence issues.	- Being Impartial
- Impartiality.	- Fair negotiation
-	- Due diligence

Go and read this case
MOHAMED ABDALLAH KALINDO VS GRAHAM SECURITIES FINANCE & INSURANCE LTD, HCT at DSM, Civil case No 220 of 2002

Procedures
- We ought have regard by two ways
(i) From the village land act
Granted land to TIC - Derivative Rights

(ii) Sometimes from Individuals or Companies and the seller should surrender the CRO so as Commissioner for land can allocate to TIC

You guys ought not to go direct as per the Circumstances of the question.

RECAP

IV Time should be reasonable] Exclusivity
Payment should be hardly 1%] Agreement

WRAP SESSION

ACADEMY
PAGE NO.
DATE

⇒ 204 (Form) Costs

Several costs in the form

House sold at Tshs. 200,000,000/= (total amount)
But there are costs incurred
Costs of construction
Dalali costs (Broker) – Agency fees
All attributes to the costs.

Do not take all the amount to compute the costs.

There is Tax base and tax rate.

Tax base - what is used to calculate

Today: Stamp Duty & Capital Gain Tax

Tax base - The Law under S. 90 of The Income Tax Act. Whichever is high

Stamp duty is of tax base

Capital gain tax is the rate of tax measures 10% and 3% whichever is greater.

Difficulties:
On allowable deduction

Finance Act, 2023
from 3% and 10%

Tell, which transaction and record keeping
Limited: 10% of the gain
Limited: 1%

In France has, since, a work paper why
would not you be paid "unlimited"

How then for the corporate, which portion not
to be making, they should keep a cash,

WHAT SHOULD SUPPLIED TO BE:

The owner of the fact and payment of it:

1. Registered yourself on HMRC tool
   i. of TAR within a certain time
2. VAT
   a. In of VAT Act
      Each who should be registered as such,
      Income or Flow. This is a compulsory
      registration.
   b. The use of this tool
      Once you receive any income of any amount
      make the any amount is supplied with
      etc. Every transaction should have this.
4. Once you are carrying Capital Gain Tax
   As per our land, then on the Individuals,
   So for Capital Gain Tax, it is Single
   Instalment.

COMMISSIONER FOR LANDS

You all did good. Congratulations guys.

⇒ Make sure you own your documents
Know all the documents.

⇒ In Conveyancing, the TITle Deed is the basis of your process.
⇒ Make sure that all signatures match.
Know everything in your document.
⇒ The other is the issue of Receipt.
We go direct to see if payments has been made.

SPANCO:

Notification - arrange documents properly.

TWO QUESTIONS:

1. What happens if GRO expires its term?
   - Does that mean Easement expires?
   - Renewal is possible
     Easement depend whether INFINITE or NOT INFINITE.

2. What is the legal effect of transmission where Executor is a foreigner taking into account the provision of section 20 of LA
   Executor is not the owner.
   Receiving one should be Tanzanian
   Should not be a beneficiary.

ACADEMY
PAGE NO
DATE

On Monday 11:00 Am, we will have demo of FIELD

How to access and operate Mfumo wa Field.

DISCUSSION

Rukundo Charles
Wakili
07/06/2025

Disposition generally
S. 36 - 62
Notice to the Commissioner Form No. 29

Approval for disposition - Form No. 30

There need to be Agreement Land Form No. 38
Just write it the way you want.

There need to be Valuation Report. Need to be done with honest.

Annex with Title Deed to see if you have Honored the conditions.

Commitment bond - that the buyer is Committing himself that he will develop the Land at the specified time S. 37 (8) of the LA.

Commissioner shall satisfy if there is any person with interest

By virtue of sale
→ Spouse Consent ← Joint occupier.
→ Mortgagee's consent

When there is no one interested then have to Affidavit As To MARITAL STATUS

What if the one having interest is a Mortgagee then that not to be CONSENT from the MORTGAGEE.

You should clear encumbrances first before selling the property.
- Tax Penalty
- Tax Encumbrances
- Tax Easement

Capital Gain Tax on realization of land Amendment of Income Tax Act by 2023 Finance Act

⇒ Tax is on the Net return (Profit) and not gross return.
⇒ If you have no record of cost of development etc then 3% of the whole sale amount.

⇒ Costs of realization

ENCUMBRANCES ON DISPOSITION OF LAND
1. Mortgage
2. Easement
3. Tenancy

MORTGAGE

- Discharge Mortgage
- Register Mortgage

Make an application to the Mortgagee so as they can consent the disposition of that Land, S. 129 of the Land Act.

EASEMENT

It is a right to way right to pass

What if the one buying does not wish it to continue?

Form No. 59

Make application for cancellation of Easement

⇒ Dominant owner
⇒ Servient owner

LEASE / TENANCY

How to end or to deal with it.

Evaluation as to whether the Lease Agreement can be terminated on the occurrence of future event S. 81 of LA. So whether sale of the property is among the future events.

If not, at the consent of the buyer, the lease will be transferred. Whereas, the buyer will become the new Landlord.

Questions

What if the Buyer rejects to transfer the lease?

What if the lease is approaching to an end?

ACADEMY
PAGE NO.
DATE

USE OF LAND

Final (37th cohort).

The use of Land is on the Title Deed.

You cannot change the use of Land unless and until you have obtained the approval of the Commissioner.

Industrial → Residential → Commercial

Application for the change of use of Land

Or read if you are about to buy the Land of which its Tenure has expired!!

Change of use under section 35 of The Land Act - Land Form No. 27
Send to Commissioner for Land.

Qus: Industrial use, want conditionalism property
⇒ Apply the change of use etc

LAPSE OF LAND TENURE

33, 66, 99 years

1976 (WPA - 37th Cohort)
Their wishes cannot be proceeded as it has already expired.

ACADEMY
PAGE NO.
DATE

RESPONSES:

Make application first for RENEWAL of the Land Lease to the Commissioner for Lands. Section 32(3) of The Land Act

IF it is likely to expire, advise them to renew it first.

Land Form No. 24 IS for RENEWAL ISSUED BY THE COMMISSIONER FOR LANDS

Make an application to the Commissioner for Lands through a letter or customize the forms. Just a letter.

Be aware of the forms and who is speaking therein.

JOINT OCCUPIERS

No one knows he/she shares. Hence are joint occupiers.

If we all want to sell together No problem.

What if one wishes to sell? Here is the problem.

You should make an APPLICATION FOR SEVERANCE of Land - Land Form No 61

From joint to occupancy in Common.

5-4/59.

ACADEMY
PAGE NO.
DATE

Once SEVERANCE is done then, it is in common but we want all to have its shares.

Then Go ahead for PARTITION OF LAND under section 62 of the Land Act

We use 'Land Form No. 62 and 'Land Form No. 63

TWO TYPES: } 62
(i) Where the co-occupier has consented
(ii) Where the co-occupier has not consented } 63 (Big Place + Large plot)

No partition to Joint occupancy. Think first of severance of Land.

What if I am the sole owner, I want to sell part of my property?

Read here Section 65 of the Land Act - 'Disposition to yourself.

You dispose the same property to yourself and the person and you all become Occupiers in Common.

Then after occupancy in common then you can go direct to partition of it. Land Form No. 62.

If there is a big area - SURRENDER THE RIGHT OF OCCUPANCY then with leave to make application for survey to get more Plots

If you have not consented then make the application to the Court so as they can partition "PARTITION BY ORDER OF THE COURT" Land Form No. 64

DISPOSITION OF MATRIMONIAL PROPERTY

Assume that Consent has been withheld.

I advice that there need be an ~~CONSENT~~ Affidavit stating such facts. Because there was two options. To have Consent or otherwise.

TRANSMISSION BY OPERATION OF LAW

Two Circumstances:
(i) Upon death
(ii) Any other form of Disposition other than death but recognized under the law.

UPON DEATH
There need to be Probate or Administration of Estates - Letters of Administration' Act.

S. 67 - Registration as Legal personal Representative.
Form No. 20 of Land Registration Rules.

Form No. 9 should be attached with the Certificate and Letter of Administration.

Non Assent to Requisition Form No. 12

If he is a beneficiary, bequeath to himself his from Personal Legal Representative to be his Owner.

Part of 37th Cohort that was the question

OTHER TRANSMISSION

S. 71

(i) Attainment of Eighteen (18) years and the name was registered in the name of Guardian [ICA 37th Cohort]

Guardianship expires once a person reaches 18 years.

(ii) Change of name whether individual or Legal Entity.
[Final 38th cohort - Yes & Yes].

TUDARCO to DARE TM

(iii) Enactment of the law which vests the property to any other body.
Eg from one taxes to another taxes
LFF Act, PSPF Act

Purpose of Transfer Instrument to Minister (Under Section 4 of Mortgage.

Sale side of the property under Public Auction

(a) Division of Matrimonial Property

(b) Any other order of the Court vesting the property in any other person.

In Transmission The Commissioner for Lands and Settlement

(c) Sale of the Landed property to satisfy the Decree.

Here we are talking of the Form No. 25 as per the Land Registration Rules.

LAND
RECTIFICATION OF A REGISTER
S 99 of the Land Registration Act

Mwea Irrigation Scheme Shirika Plot.

So always to be made an Final Buyer to mean

Where should the Registrar do?

What should mean do?

Application by Mother & Brothers
Sixty days as per 114

Registering is subject to the Order of the High Court as appeal.

Transfer might not be go directly.

So, the Order if we get by the High Court the same ought to be submitted to the Registrar for Rectification.

The Order of the Registrar Hereafter will be contravention of Section 99 of the Land Registration Act.

You should pass to the Court first.

Go to Registrar with Order of the Court.

Assume the Order sent to the Registrar and he has refused what do we do?

⇒ APPEAL: FROM THE DECISION OF THE REGISTRAR

To the High Court

Time: Three (3) Months

Requirement: Notice of Intention to Appeal

Section 101 and 102

Extension of Time: 102

Parties ⇒ Yourself Vs Registrar, A & B
Buyer + Seller

Section [illegible] of the Land - Instrument and appeals to Instrument.

Question: Assume that you have bought the property of Mr. Y and transfer was not effected and now appointed as Arbitrator to settle Quarrel and he is not reachable. He went there with Title Deed and I cannot transfer to Right. What should I do? As I went to all the Plot and it is in the name of the one who sold it to me? Assist him on what he can do?

At the Circumstances where the Original owner cannot be be found. I only have Sole Agreement.

Here, file a Case against the person. Summons will be issued so as he can come and defend. In that Case I pray to be declared as the one with interest over The Landed Property.

⟹ Now, Case will proceed Ex-parte and I will be declared to be a real owner then I will be free to Execute that Decree by Transmission (Form No. 25) in The Land Registration Rules, which the application is attached with the Order of the Court.

Then Certificate will be Issued on my favour. That is all.

I go there saying that the seller is not capacity to offer the type of land I am name. That will be the cause of action

If dies, then Administrator is ready to continue no problem. And if he does not want to proceed with a case against legal Representative

UNIT TITLES

TACKING, PRIORITY, CONSOLIDATION & VARIATION
Section 119, 119, 120

CONCEPTS under Mortgage

Now is likelihood that the security might be of higher amount of the loan taken

What if you want more loan from the other Bank? That Means you are doing Tacking
(i) Taking loan while the previous loan is still pending

Taking loan using the same security which has not been discharged.

VARIATION OF A MORTGAGE

Section 101 of the Land Act

Variation

It is adding or subtracting some clauses in the Mortgage

If Variation happens, can the Bank will offend or recline their right of sale? What if I have defaulted to one Bank only.

PARI PASU AGREEMENT - When we agree that, if he or she will default. He will all and divide equally among ourselves. (Banks)

How the same is entered?

At the time you do tacking Variation then the Banks should proceed to protect their interests.

PRIORITIES:

Who will be paid first?

PARI PASU AGREEMENT is more than realization of the property. They may agree that in event of default, the debt will be shifted to another Bank. This is now of the Agreement.

CONSOLIDATION

Two securities to take a single loan. So there is consolidation of securities to secure one loan. Section 119 of the Land Act [Cap 113 R.E 2019].

CAVEAT

Three Types of Caveat here:-

1. Marriage

(i) Caveat filed to the Registral of Document
- Registration of Documents Act
- Land Registration Act Cap. 334 R.E 2019

Note If I go to object unregistered Land then Section 32 of the ~~Land~~ Registration of Documents Act

But If to the Registered Land then S. 78 of the Land Registration Act [Cap. ~~334~~ R.E 2019]

(ii) Caveat Under the Marriage
If the interest acquired by virtue of Marriage then you are not precluded from using Section 78 of Land Registration Act [Cap. 334 R.E 2019]
Section 59(of The Law of Marriage Act [Cap. 29 R.E 2019]

(iii) Interest of any person by virtue of Registration Section 78 of LRA Act.

E.g Bank Tenant, e.t.c

Protection of interests and not ownership. Is what we are talking here.

Two Types of Caveat

- Caveat under the Registration of Documents Act [Cap 117]
- Caveat under the Land Registration Act [Cap 300 RE 2010]

Land Registration Rules - From it is the duty of the CHIEF Registrar Land Registration of Documents to perform the duties of the Registrar.

MORTGAGE

Registration of the Land Mortgage

Once it is a Transfer, you should obtain consent from previous Mortgagee which conditions shall be to settle your pending payment.

Opinion of a Mortgagee does not mean ending of.

UNIT TITLES

The Plot/Property should possess a granted right of Occupancy (Title)

Division the property. & It is the Law Unit Titles Act which binds us apply in the Land Act [Cap 113 RE 2019]

How do we develop a Unit Title?

No Plot should first have GPA

Unit Property you should have GPA first.

To apply for GPA - Form No. 19
Made under section 25 of the Land Act
[Cap. 113 R.E 2019]

You send the same to the Commissioner for Land.

After that Here:-

(i) Registration of Unit Plan
Rule 9
- Certificate of Architecture
- Certificate from registered Land Surveyor (The Plan is within the ~~internal~~ External boundaries of the Plot)
- Certificate of the Local Authorities
- GPA
- Statement of Common Area.
(Where all occupiers will be staying).
- Parking
- Toilets
- Fire Extinguish
- Unit might be Five and above so as to be managed by Associations

MANAGEMENT OF UNIT TITLE

Five and more may form Association. S. 35(1) of the Unit Title Act [Cap. 416 R.E 2008]

Less than five may form by-Laws to regulate and govern common areas.

{Unit Titles can be Issued to clusters or high elevated buildings.}

(ii) Registration of Unit Title

Ten will be Issued with the Unit Title and the GRO will be broken with the transaction.

So what follows after is the Disposition of the Unit by the holder of the Unit Title. Disposition as per Section 28 of the Unit Title which follows that of Land Act

⇒ What are the Powers of the Developer?
No power he has

⇒ What are the liabilities of Developer which will occur to him once Left haipandi?
Liability of Developer ends when you transfer the property.
Buyer be aware
You ought to have inspected both Physical (Patent) and Latent Defect.

⇒ Under that circumstances should refer to association ~~Reputation~~ Section 40 of Unit Titles

Rectification of common Areas and all things

Lack of the Land titled Law 2 Sep.

Land Act
- S. 15
- S. 65
- S. 32
- S. 62
- S. 121
- S. 163
- S. 150
- S. 159
- S. 62
- S. 64 of LA
- S. 117, 118, 119, 120

Land Registration Act
- S. 67, - 71
- S. 99 - 102