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**Title: LEGAL CHALLENGES FOR COMPENSATING
PARTIALLY ACQUIRED PROPERTIES IN TANZANIA**

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Donald Masunga is a seasoned land economy surveyor with over 15 years of experience in land management specializing in property valuation. Over the years, Donald has gained considerable experience in valuation of a wide range of assets for various purposes, a fact that has earned him a position of the principal valuer at the Ubungo Municipal Council in Dar es Salaam, Tanzania. Quite a large number of valuations for which he is involved in are for compensation and financial reporting purposes. Donald earned a bachelor degree in Land Management and Valuation in 2007 at University of Dar es Salaam. Through his studies, he developed a passionate interest in the valuation of real property and the legislation which governs it, especially compulsory purchase legislation. Currently, Donald is pursuing a master degree in laws for Land Administration and Management (LLM. LAM) at The Open University of Tanzania. His long-term goal is to become a national-level policy adviser on compulsory land acquisition matters. He wants to use his untiring commitment and drive to bring more fairness in land acquisitions through advocating for legal reforms, publishing in the field of land management, continuing education, and professional associations platforms.

ABSTRACT

This study is about legal challenges for compensating properties which are only partially acquired during compulsory land acquisition in Tanzania. The research was prompted by the existence of a universal complaint on unfair and inadequate compensation especially for partial property acquisitions. The study objectives were to explore the existing legal gaps on the laws that governs partial property acquisition and compensation and to gauge whether the current regulatory framework guarantees fair and adequate compensation for partially acquired properties. The research adopts a combination of doctrinal and empirical legal scholarship approaches. It employs a case study design where by two projects are selected as cases. Data is analyzed using interpretation and legal reasoning, and thematic analysis. The study found that, there are a number of gaps in the legislation governing compulsory land acquisition. The gaps are: sensitization meetings are not defined (qualified) at all in the legislation, unregulated timing of the sensitization meetings, lack of clarity on notice to acquire land, improper bases and methods used to assess compensation, total absence of the definition of word compensation, lack of fairness of the acquisition process and compensation, and infringement of tenants' rights. The study recommends either amendment of the existing principal legislation governing compulsory land acquisition so as to address pertinent issues of partial property acquisition; or making guidelines to specifically guide partial property acquisition.

Key words: partial property acquisition, compulsory land acquisition, compensation, fairness and sensitization, project affected persons.

1.1 Introduction

Partial property acquisition, where government authorities acquire a portion of a property for public use or development, can be a complex and challenging process. Several key challenges may arise during this process, for example legal and regulatory challenges, timeline and delays, valuation disputes, community opposition, negotiations and communication, mitigating social impact, property use restrictions, and infrastructure and utility considerations. A single land acquisition process may face one or several of these challenges. Also, some of these challenges have a tendency of leading to other challenges, for example, a gap in the regulatory framework may lead to most of these challenges. Partial property acquisitions in Tanzania are prevalent due to the fact that infrastructure provision or upgrading are among the main reasons for which compulsory land acquisitions are done. Acquisitions for infrastructure provision or upgrading is likely to affect only a portion of the property because more often than not, it is only a strip of land (a corridor) which is required for constructing the said infrastructure, for example a road, gas pipeline, drainage channel, water transmission lines, electricity lines, and others. However, the Tanzanian land acquisition law is somewhat broad, covering all aspects and types of acquisitions albeit generally. A compulsory land acquisition law that combines all sorts of expropriations is likely to present a shallow treatise of the aspects it seeks to regulate.

This paper seeks to explore the existing legal gaps on the laws governing partial property acquisition and compensation, and examine whether the current regulatory framework guarantees fair and adequate compensation for partially acquired properties in Tanzania. What prompted this study is the existence of widespread objections against compensation especially for partial property acquisitions by most of the Project Affected Persons. Objections against such compensation revolve around adequacy of the compensation in comparison with various losses by the owners, and severance and other adverse effects resulting from compulsory land acquisition such as injurious affection. However, officials involved in assessing compensation payable, attribute the ensuing compensation problems to the gaps in the legislation governing compulsory land acquisition in the country.

1.2 Partial property acquisition versus principles of compensation

Partial land acquisition refers to the process by which a government or other authorized entity acquires a portion of privately-owned land for public use or development projects.¹ This practice is often employed for various purposes, including infrastructure development, urban planning, transportation projects, and public utilities. Partial land acquisition is typically carried out when it is deemed to be in the public interest. This concept is closely linked to the legal principle of eminent domain, which grants governments the authority to take private property for public use, provided that just compensation is provided to the property owner.² The most common purposes for which powers of eminent domain are invoked to acquire private lands include infrastructure development, urban planning, land use planning

¹ Bell A. and Parchomovsky G., Partial Takings, Columbia Law Review, 2022, Vol.117, No.8.

<https://columbialawreview.org/content/partial-takings/>. Accessed on 28 May 2023

² Ndjovu C., Compulsory purchase in Tanzania: Bulldozing Property Rights, PhD Thesis, KTH-Stockholm, 2003.

utilities and services, and environmental preservation. When a government or authorized entity wishes to acquire land partially, they must follow a legally defined process. This process typically includes notifying property owners, conducting appraisals to determine fair market value, and offering just compensation for the land being acquired. Property owners have the right to negotiate, appeal, or challenge the acquisition in court if they believe the compensation offered is insufficient. This means that, compulsory land acquisition, it be full or partial, is usually done based on long-standing well-established principles.³

The right to fair and adequate compensation is a fundamental principle that underpins land acquisition processes. It recognizes the importance of protecting the property rights of individuals and ensuring they are justly compensated for the loss of their land, livelihoods, and assets.⁴ The said right is often enshrined in Constitutions, national laws, or international human rights instruments such as the Universal Declaration of Human Rights of 1948. It reflects the recognition that land is not merely a commodity but holds significant value to individuals and communities, both economically and culturally. As such, when land is acquired for public purposes, it is essential to provide affected parties with compensation that is fair, equitable, and reflects the true value of the land and associated losses.⁵ The right to property is recognized by every civilized society all over the world including our society. Since the right to property is a fundamental human right⁶, people who are deprived of their property must be adequately compensated. On top of adequate compensation, other societies insist on fair and prompt compensation⁷. In Tanzania, the right to fair and adequate compensation is provided in the Constitution⁸, Land Policy and laws that governs land, for example the Land Act⁹, Village Land Act¹⁰, the Urban Planning Act¹¹ and others. The right to compensation seems to be a problematic issue in the Tanzanian land administration relative to all other rights.¹² In spite of the global¹³ and local standards regarding this right, it is considered to be much violated in Tanzania, where complaints concerning inadequacy of and delayed compensation have been at the top of the discussions about the land administration system¹⁴.

³ Walacik, M., and Żróbek S., Chosen Principles of Land Acquisition for Public Purposes and Just Compensation Determination in Poland. *Some Aspects of Compulsory Purchase of Land for Public Purposes* (2010): 19-33.

⁴ Ghimire, S., Arbind T., and Sagar R.S., Governance in Land Acquisition and Compensation for Infrastructure Development. *American Journal of Civil Engineering*, 2017, Vol 5, No.3, pp. 169-178.

⁵ Ibid

⁶ Universal Declaration of Human Rights 1948, Article 17

⁷ Ibid

⁸ Constitution United of the United Republic of Tanzania 1977 (as amended from time to time), Article 24

⁹ No.4 RE 2019

¹⁰ No.5 RE 2019

¹¹ No.8 of 2007

¹² Komu F., Conceptualizing fair, full and prompt compensation: The Tanzania context of sustaining livelihood in expropriation projects, *JLAEA*, 2014, Vol.2, No.2, pp.252-267.

¹³ World Bank Operational Policy 4.12

¹⁴ Ndjovu (2003) and Ndjovu (2016).

1.3 Theoretical Framework

The concepts explored have a bearing on the current subject matter and their application is linked with challenges of compensating a partially acquired property. Concepts like basis of value, market value, cost, and replacement cost are explained. The doctrine of severance is also discussed because it relates with the current study.

Basis of valuation for compensation

Simply put, the phrase basis of valuation means the basic type of value that is to be established in a particular valuation exercise.¹⁵ Bases of value (sometimes called standards of value) describe the fundamental premises on which the reported values will be based. It is critical that the basis (or bases) of value be appropriate to the terms and purpose of the valuation assignment, as a basis of value may influence or dictate a valuer's selection of methods, inputs and assumptions, and the ultimate opinion of value.¹⁶ There are two broad categories of bases of value, thus; market value and non-market value.¹⁷ Global standards identify open market value as the basis of valuation for compensation purpose. Tanzanian land regime borrows these standards and incorporates them in the legislation. The Valuation and Valuers (General) Regulations, 2018 identifies open market value as a basis of valuation for compensation purpose and specifies the comparative method as appropriate method to be used when assessing compensation payable.¹⁸ The selection of the basis and method of valuation have implications in assessing the compensation payable for partially acquired properties. A valuer tasked with estimating the value of a part only may face technical difficulties because valuing a property based on the market calls for comparing the property under valuation with recently sold properties of which price would be an indicator of the property that is to be valued. Is it possible to find a property that was only partially sold? The seriousness of the challenge can be understood clearly if we take a look at the definition of market value as written below.

Market Value

According to the International Valuation Standards Council (2021), Market Value is defined as estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion. The land and valuation regimes in Tanzania also use this definition as it can be seen in the National Land Policy of 1995 and the Valuation and Valuers Registration Act, 2018. According to the National Land Policy, market value means the most probable selling price or the value most often sought by buyers and sellers. It assumes buyers and sellers have reasonable knowledge, act competitively and rationally, are motivated by self-interest to maximize satisfaction and both acts independently and without collusion, fraud or misrepresentation. Technically speaking, the definition is in total contradiction with compulsory land acquisition because here the property is acquired without the willing consent of the owner. How can you compare a property

¹⁵ Lusht M., Real Estate Valuation: Principles and Applications, KML Publishing, New York, 1997

¹⁶ International Valuation Standards Council, International Valuation Standards, London, 2022

¹⁷ Ibid, IVS 1

¹⁸ Ibid, R.10

that was sold under open market conditions with the one acquired compulsorily? A close scrutiny of the law is required in order to gauge the extent to which these interpretations pose technical difficulties in implementing the law.

The Doctrine of Severance

The doctrine of severance in compulsory land acquisition refers to a legal principle that recognizes the potential harm or loss suffered by landowners when only a portion of their property is acquired through compulsory purchase. This doctrine is primarily concerned with the impact of land acquisition on the remaining land that the property owner retains.¹⁹ In many cases, governments or public authorities may acquire only a portion of a property for specific public purposes, such as road widening, infrastructure development, or public projects.²⁰ The doctrine of severance acknowledges that this partial acquisition can have adverse effects on the landowner, particularly when the severed portion is integral to the use and value of the remaining land. According to this doctrine, when part of a property is acquired, the remaining land may lose value or become less useful for the landowner's intended purposes.²¹ For example, if a portion of a large farmland is acquired, it might disrupt the farmer's ability to efficiently work the land, leading to decreased agricultural productivity.

Therefore, the doctrine of severance establishes that landowners are entitled to compensation not only for the land taken but also for any damages or diminution in value that result from the partial acquisition. This compensation is meant to offset the financial losses experienced due to the reduced utility or market value of the retained property. To determine the extent of severance damages, expert valuers may assess the value of the remaining land before and after the partial acquisition. The compensation awarded is typically intended to make the landowner whole and restore the economic value of the retained property to the greatest extent possible. Laws and regulations governing compulsory land acquisition often include provisions for calculating and awarding severance damages to landowners. These safeguards are intended to ensure that landowners are treated fairly and justly in the process. The doctrine of severance recognizes that while governments may have legitimate reasons to acquire land for public purposes, landowners should not bear the full burden of the resulting economic loss when only a portion of their property is taken. Instead, they should receive compensation that accounts for the diminished value and utility of their remaining land.

1.4 Legal Framework Governing Compulsory Land Acquisition in Tanzania

This section seeks to highlight key statutes which governs compulsory land acquisition in Tanzania as well as key issues which are discussed in later sections of this study as being not stringent enough to enable smooth application of the respective statute. The constitution of the united republic of Tanzania requires land acquisitions to follow the due process of law. As such, responsible organs formulate and

¹⁹ The Law Reform Commission of Ireland, *Compulsory Acquisition of Land*, 2017, Dublin

²⁰ Shumsky M., *Conveyancing*, <https://www.stacklaw.com.au/news/conveyancing/what-is-partial-compulsory-acquisition/>. Accessed on 17th May 2023

²¹ Bell A. and Parchomovsky G., *Partial Takings*, *Columbia Law Review*, 2022, Vol.117, No.8. <https://columbialawreview.org/content/partial-takings/>. Accessed on 28 May 2023

enact laws to govern compulsory land acquisition (Ndjovu, 2016). Below is a brief discussion of various laws, policies and regulations which govern compulsory land acquisition and compensation in Tanzania.

The Constitution of United Republic of Tanzania, 1977

This is the supreme law of all laws in Tanzania. Any law that contradicts with the Constitution of the United Republic of Tanzania shall be void. Article 24(1) specifies that every person is entitled to own property, and has a right to the protection of his property held in accordance with the laws, also Article 24(2) stipulated that it shall be unlawful for any person to be deprived of his property for the purposes of nationalization or any other purposes without the authority of law which makes provision for fair and adequate compensation. From this provision it is clear that right to property is a Constitutional matter and deprivation to property without compensation is unconstitutional

The National Land Policy, 1995

The National Land Policy was formed in 1995 and its general objective was to promote and ensure secure land tenure system, encourage the optimal use of land resource and facilitate broad-based socio-economic development without affecting the environment. The National Land Policy requires payment of compensation for the land acquired for public interest based on the concept of Opportunity Cost. According to the policy, the compensation package ought to include market value of the real property, disturbance allowances, loss of accommodation, transport allowance, cost of acquire subject land, any other cost of incurred to the development of the subject land and compensation should be paid promptly and if not paid in time, interest rate will be charged. The policy provides the basis for provisions on compensation in the Land Act No.4 and Village Land Act No.5 RE 2019.

The Land Acquisition and Compensation No.47 of 1967

This Act was enacted to replace the Land Acquisition Ordinance. Its main objective is to provide for compulsory acquisition of lands for public purposes and in connection with housing schemes. This Act under Section 3 gives power the President to acquire any private interest on land given it is for public purpose. As provided by this section the acquisition should be for the public purpose, then Section 4 of the Act elaborate public purpose to include land for exclusive government use, for or in connection with sanitary improvement of any kind, including reclamation; for or in connection with the laying out of any new city, municipality, township or minor settlement.

Section 8(3) provides for publication of the notice that shall not be less than six weeks from the date of publication of the notice in the gazette. However, president can reduce such period if he certifies that such land is urgently for a public purpose. Section 13(1) of the Act provides the aggrieved individuals with mandate to challenge the compulsory purchase powers orders and notices in the court of law. Furthermore, Section 14 of the Act stipulates the general principles, theories and rules governing compensation which a valuer needs to take into consideration. In assessing compensation, a team should take into account the value of the land at the time of publication of the notice for acquisition and not otherwise; betterment, injurious affection, and any loss or damage should be taken into account; and not to take into account any possible increase in the quality or value of the land in future. In relation to this

study the Act provides for acquisitions of portions of properties and what should be considered in these cases under sections 9 and 14.

The Land Act No.4 &5 1999

These are the major laws governing land matters in Tanzania. Section 181 clearly states that in case of conflict between these statutes and other Acts, the Land Act No. 4 of 1999 shall prevail. Both the Land Act of 1999 advocate for full, fair and prompt compensation based on the market value of the property (including land without unexhausted improvement) as per Section 3(1) (g). It therefore gives right to compensation for all victims of compulsory land acquisition regardless of whether it is bare or developed.

Also, according to Section 3(g) of the Village Land Acts No. 5 of 1999, compensation package includes disturbance, transport, loss of profit or accommodation allowances, and cost of acquiring or getting the subject land and any other costs or capital expenditure incurred in the development of the subject land, to be paid on top of compensation for unexhausted improvements. In case of late compensation, an interest at market rate ought to be charged so as to discourage the acquiring authority from making unnecessary delays in compensating PAPs but also redressing them for possible erosion in the financial value of compensation assessed.

The Land (Compensation Claims) Regulations 2001

The regulations provide for who may claim compensation. According to the regulations, people who may claim compensation include a holder of customary right of occupancy where the land becomes the subject of a granted right of occupancy in favor of another person and such holder is moved or relocated under Section 34 of the Land Act No.4 of 1999. The occupier of land in any urban or peri-urban area where the President under Section 60 of the Land Act acquires such land also deserves compensation. Where such land has been acquired the Land (Assessment of Value for Compensation) Regulations, 2001 shall apply emphasize in the application or claim for compensation.

Valuation and Valuers Registration Acts No. 7 of 2016

Section 52 of this Act emphasize on prompt compensation when land is acquired for public interest. Subsection 4 provides that where the chief valuer has approved a valuation relating to compensation, the person or entity responsible shall be liable to effect prompt payment of the compensation to all affected person. The Act however, gives a general treatise of valuations and registration of valuers without detailed treatise of the subject matter. Detailed coverage of the subject matter including the basis and methods of valuation is given in the regulations made under section 70 of the Act.

1.5 Methods

The study makes use of a combination of doctrinal and non-doctrinal approaches in answering its objectives. Specifically, uses the desktop approach in revisiting the law and empirical legal scholarship in gauging the application of the said law on the ground. The idea of combining the methodologies is

supported by several authors such as McConville & Chui (2007), Duncan & Hutchinson (2012), Ngoke, Mbano, & Helynn (2023) and others. It has been widely asserted that, non-doctrinal approaches represent a new approach of studying law in the broader social and political context with the use of a range of other methods taken from disciplines in the social sciences and humanities (Banakar & Travers, 2005) and (Dobinson & Johns, 2007). The main sources of data for this research are two-fold. For doctrinal part, the source of data are the legal instruments guiding compulsory land acquisition, specifically provisions on partial property acquisition vis a vis compensation. The study used inferences from court cases and decisions arrived at. Other information was gathered from a variety of sources including textbooks, refereed journals, conference papers, legislative history and other industry and professional publications. Others included papers, valuation manuals and guidelines, minutes from meetings and directives from authorities.²² The World Bank Operational Policy and past reports on similar upgrading projects of formalisation, which were implemented by Dar Es Salaam Metropolitan Development Project in various areas, were also consulted.

Empirical data was collected from two projects, thus, the Dar es Salaam Metropolitan Development Project at Kilakala ward in Temeke municipality and the Mnazibay – Dar es Salaam Gas Pipeline Project in Mtwara at Ufukoni ward. The idea of borrowing techniques from other disciplines in order to generate empirical data to answer the questions²³ is explained and supported by various legal research literature such as Epstein & Martin (2014), Cane & Kritzer (2012) and Schrama (2011). A sample of 80 property owners were randomly selected and interviewed. (42 from Kilakala ward, Temeke Municipality in Dar es Salaam and 38 from Ufukoni ward, Mtwara Municipality in Mtwara region). Interview guides were prepared and administered by the researcher physically to respondents in the study areas. Each interview took approximately 10 minutes at the respondent's residence or their place of work based on their choice. The researcher was able to conduct between 5 and 10 interviews per day and finished data collection within 7 days. The timeframe was shorter than expected because only 62 PAPs were interviewed, others did not consent being interviewed. This study used data analysis methods commonly used under doctrinal legal research and empirical legal scholarship. They include the use of different cannons of statutory interpretation and techniques of legal reasoning (both deductive and inductive) and techniques used in analysis of case law. Empirical data was analysed using thematic analysis. Thematic analysis entails coding and closely examining the data to identify the common themes, i.e., the topics, ideas and the relationship.²⁴ As explained by Dawson (2009)²⁵, this type of analysis is highly inductive, that is, the themes emerge from the data and are not imposed upon it by the researcher. In this type of analysis, data collection and analysis take place simultaneously.

²²Francis, I., & Johns, F. (2007). Qualitative Legal Research. B M. McConville, & W. H. Chui, *Research Methods for Law* (crp. 16-45). Edinburg University Press, Edinburg.

²³ Abugu U., Legal Research Methodology and Applicable Procedures to Research in Nigeria, Paper Presented at the Virtual National Workshop for Legal Research Assistants of the National Judicial Institute, 2021.

²⁴Caulfield, J. (2019) How to Do Thematic Analysis. <https://www.scribbr.com/methodology/thematic-analysis/>.

²⁵Dawson, C. (2009) Introduction to Research Methods: A Practical Guide for Anyone Undertaking a Research Project (4th ed.). How to Books, Oxford.

1.6 Results and discussion

This study set out to examine the existing legal gaps on the laws governing partial property acquisition and compensation and to examine whether the current regulatory framework guarantees fair and adequate compensation for partially acquired properties. The gaps which were identified relates to notice of the intention to acquire land, sensitization and awareness creation, compensation assessment: bases and methods, compensation payment and resettlement, partial property acquisition, and tenants' rights and obligations. They are discussed below.

Notice to Acquire Land

The legislation requires the notice to be served personally or left at the persons place of business or abode.²⁶ As it happens, people owning properties in a certain area might be living in a different area. In this study area, 13% of the respondents claimed to be living in Mtwara CBD, a distance of 4 kilometres from Ufukoni. The legislation is again silent on property owners who live far from the project areas but whose place of business or abode are not known. Another dimension on this particular issue is the timeframe for the affected people to give possession. The law allows for a period of not less than six weeks for the victims of acquisition to vacate premises, but if there in an urgency the period can be less that six weeks. Here the law generalizes as if all projects will require whole property acquisition. For partial acquisitions, most likely the property owners will remain in the same houses while doing repairs or constructing additional structures because they are not paid accommodation allowance so that they can relocate to somewhere else when repairs are being done. These modifications require consents and permits issued under different statutes following different procedures and may take time for property owners to get. Also, the actual process of repairs and construction of additional buildings may take time longer than that specified by the Land Acquisition Act, 1967. All respondents from both study areas revealed that they were advised to yield possession of the land that was to be acquired quickly regardless of the fact that the law allows for 42 weeks grace period. The same issue was critically examined and determined in *National Bank of Commerce v Suleiman Nassor Ally*²⁷.

Sensitization and awareness creation

This is the most fundamental stage in the process of land acquisition, where the community to be affected by the envisaged project is made aware of rights, obligations, and benefits of the project. There are several issues here. First, the principal legislation governing the land acquisition is the Land Acquisition Act, No.47 of 1967. There are no provisions in this Act or any other Act for that matter regarding the matter sensitization. Sensitization meetings which are conducted by acquiring authorities before land acquisitions draws their legality from compensation guidelines only. Second, the land acquisition legislation does not provide for the quorum for these meetings, a loophole which may be used to justify decisions which are to the disadvantage of the community. Again, the legislation does not provide for the location of the meetings or distance between locations which would necessitate a

²⁶ The Land Acquisition Act, No.47 of 1967, s.6

²⁷ (1989) TLR 67

separate meeting for each location. In both study areas, two or more wards were combined to attend one sensitization meeting, at a location which is far from the usual gathering place of the community in question. For the case of Kilakala, two of the sensitization meetings were conducted in Sandali ward (combining both Kilakala and Sandali wards), while in Ufukoni a meeting combined three wards (Ufukoni, Mitengo and Magengeni), and at a location far from Ufukoni area. Comparing average populations in the study areas and average attendances, only 0.2% of the residents attended the meetings for the Kilakala case and 1% for the Ufukoni case. This is a very low attendance rate for sensitization meetings.

Compensation assessment: bases and methods

Assessment of compensation amount was done according to Land Acquisition Act of 1967, Land Act No. 4 and 5 of 1999 and Land (Assessment of value of land for compensation) Regulations, 2001. Compensation amount was obtained from; market value of the land, building and crops, disturbance allowance, transport allowance, accommodation allowance. Depreciated replacement cost as a proxy of market value was used to ascertain the value buildings together with other improvements on land. The basis of valuation for compensation as provided by the law is the open market value. Stating the fundamental principles of the National Land Policy of 1995, the Land Act No.4 of 1999 identifies the market value to be estimated when assessing compensation.²⁸ Also, the Land Regulations of 2001 specifies the basis of valuation to be market value.²⁹ Where the the property is of special nature and not saleable, the basis can be cost.³⁰ There are other statutes which provides for basis of valuation albeit generally. For example, the Valuation and Valuers Registration Act of 2016 identifies bases of valuation to be market, cost and income. Regulations 8 and 9 of the Valuation and Valuers (General) Regulations, 2018 made under Valuation and Valuers Registration Act of 2016 reiterates Regulations 3 and 4 of the Land (Assessment of the Value of Land for Compensation) Regulations, 2001 as per the above quotation.

There are technical challenges with the bases and methods of valuation as provided by the law. The market value basis is provided as a priority while others are its alternatives. According to interview conducted with the Valuers of Temeke municipal council (valuation of Kilakala properties) and those of Ardhi University (valuation of Ufukoni properties), it is difficult to estimate the market values of properties which are only partially affected. Market value of the property is obtained by making reference to other similar property which have been sold recently. Apparently, properties are not sold in small bits, they are sold as a whole, unless it is a condominium. This challenge is legal as its source is the land acquisition and compensation legislation.

The Land Acquisition Act, 1967 requires that adverse effects (injurious effects) of the partial compulsory acquisition on the remaining land must also be assessed. This is for addressing the effects of

²⁸ Land Act No.4 Cap 113 RE 2019, s.3(1)(g)(i)

²⁹ Land (Assessment of the Value of Land for Compensation) Regulations, 2001; Regulation 3

³⁰ Ibid Regulation 4

partial acquisition though provisions of severance and injurious affection. However, the provisions of the legislation are not stringent enough to cater for proper assessment of the value of the property portions which are acquired. Other properties were affected later on by the vibrations caused by earth moving equipment during the construction of the drainage channel. Owners of these properties claimed compensation for the effects but had not been paid by the time the author was collecting data for this study. Matters pertaining to injurious affection were also critically argued and analyzed in *Southern Range Nyanza Limited v Uganda National Roads Authority v Cowi Limited*.³¹ Consideration of all effects is necessary when compensating a partially acquired property, a fact which in turn calls for proper bases and methods of valuation.

Compensation Payment and Resettlement

In the study areas there were serious concerns regarding this particular matter. There are various statutes which discuss compensation or mention the word compensation several times. No single statute among them provides the definition of compensation. In practice compensation is paid in money although the law allows other forms to be used. The land regulations of 2001 identify forms of compensation to be monetary, a plot of land similar to the one being acquired, a building similar to the one lost, plants and seedlings, or foodstuff.³² Moreover, as it has been pointed out before, the land acquisition legislation gives property owners the power to force acquiring authorities to take and compensate for the whole property if they so desire.³³

In the study areas, monetary compensation was paid after valuations have been approved by the relevant organs. And this compensation was paid for the portions of the properties which were acquired. However, in Kilakala a number of people required the acquiring authority to acquire the whole house despite that the house has been affected partially. These constituted 19% of the respondents. The same thing occurred in Ufukoni area where 34% of the respondents requested the valuers to include the whole property in the compensation assessment. When asked on the reasons the PAPs said they were afraid to continue living near a gas pipeline because they usually hear about scenarios of gas explosions in other countries. None of the partially affected property had compensation paid for the whole property regardless of owners request to have the whole property taken. The fact that people no longer wanted to live close to the gas pipeline means that demand for land along the pipeline fell which in turn affected land values negatively. This is a clear case of injurious affection and should have been considered in compensation assessment. Gas pipelines have led to community vulnerabilities before³⁴, with harmful effects including disruption of land, ecosystem and communities, carbon emissions, spills, leaks and

³¹ *Southern Range Nyanza Limited v Uganda National Roads Authority v Cowi Limited* [2014] HCU 423 (High Court of Uganda)

³² Land (Compensation Claims) Regulations, 2001; Regulation 10.

³³ The Land Acquisition Act No.47, 1967; s. 9&10.

³⁴ Emanuel R.E., Caretta M.A., Rivers III L., and Vasudevan P., *Natural Gas Gathering and Transmission Pipelines and Social Vulnerability in the United States*, Geohealth, 2021 Vol.5 No.6, pp. 1-12

explosions³⁵. The officials perceive PAPs as people who want for force the acquiring authority to acquire the whole property so that they can get more money. On their side, PAPs who rejected compensation for partial land acquisition and they forced the acquiring authority to take and compensate for the whole house for a reason that remaining area is not enough to accommodate the whole of his/her family. Another complexity is caused by the provision which specifies the form of compensation. PAPs who required the acquiring authority to take and compensate their whole property expected that the acquiring authority would give them alternative parcels of land as per Regulation 10 of the Land (Compensation Claims) Regulations, 2001. The legislation should have provided that owners whose properties are only partially acquired do not qualify for alternative plots.

Partial Property Acquisition

The Tanzanian legislation covers the issue of land acquisition in general terms. Both full and partial acquisitions are addressed by the legislation in the same way without consideration of the technical hitches posed by each of them. Faced with this fact, valuers of Temeke Municipal Council who were assigned to assess property values for compensation purposes under the DMDP, decided on which properties to be regarded as fully affected and which ones were partially affected. Those considered as fully affected would be compensated fully, and this category included properties that had been affected more than three living rooms. Those with only 1 or 2 rooms affected were categorized as partially affected and their compensation would be for the two or one room. The gap in law led to these valuers making their own rules of categorizing property.

Tenants' Rights and Obligations

Based on Tanzanian legislation, tenants are not compensated, only property owners are compensated. The effect to third parties is completely ignored except when projects are donor funded. For example, in World Bank funded projects, reinstatement policy recognize tenants pays compensation for disruption of their rights. During implementation of the project in Kilakala ward third party interests were not compensated for even for those whose business interests were disturbed. Many residents in Kilakala ward are employed in different economic sectors including small-scale trade, food vending, and small shops. As observed in the study areas, partial property acquisition is most likely to affect tenants first because, as the side of the house decreases, for example two rooms are demolished, the tenant will most like be given notice to look for another rental premises so that the property can still be enough to accommodate the owner's family.

The Question Of Fairness

Fairness in compulsory land acquisition refers to the just and equitable treatment of property owners when the government or other authorized entities acquire private land for public purposes. Ensuring fairness in compulsory land acquisition is crucial to uphold the rights of property owners and maintain

³⁵ O' Hanlon M., The Science is Clear: Any New Fossil Fuel Infrastructure Threatens our Ability to Prevent Catastrophic Warming. So why are We Still Building Pipelines? <https://www.climaterealityproject.org/blog/climate-101-oil-gas-pipelines>. Accessed on 26 May 2023

social harmony. Balancing the public interest with the rights of property owners is a complex challenge. Fairness in compulsory land acquisition requires a careful balance of legal frameworks, ethical considerations, and practical implementation to ensure that the process respects property rights, provides just compensation, and serves the greater good of the community. Key principles and considerations for achieving fairness in this process include: public purpose, just compensation, transparent valuation, procedural safeguards, participation and consultation, resettlement and rehabilitation, avoiding discrimination, timely compensation, judicial review, public accountability, and fair negotiation.

In this research, these parameters were tested for compliance and all of them were found to have been complied with except for a few. For example, the question of fair negotiation featured strongly in the study areas. Respondents consider the acquiring authorities not to have abided to this principle because requests of all people who wanted the whole of their property taken were declined.

Another principle which is thought to have been violated is the resettlement and rehabilitation. This is closely related with the preceding point of fair negotiation. PAPs who wanted acquisition of the whole property wanted to resettle in other areas but the amount of compensation they were paid could not enable them to do so. This is because the amount was based on the partially acquired property. As it has been pointed out in the previous sections, some of the remaining portions of the buildings had been injuriously affected due to severance or construction activities when the projects were being implemented. For example, for the case Kilakala ward in Temeke municipality, some houses sustained cracks due to earth moving and compacting activities of the bulldozers. For cases like this, compensation should have been paid for the whole property so that owners could reconstruct their houses or move to somewhere else altogether.

Another problematic issue was on procedural safeguards. This is also closely related with the principle of judicial review. Sensitization meetings did not at all highlight to the potential PAPs, the possibility for them to present their case, and a fair chance for them to contest the acquisition in court in case they were not satisfied with the process of land acquisition. This happens to be an important matter to be clarified in awareness creation meetings if at all complaints are to be avoided. The last problematic issue was the question of participation and consultation. As it has been pointed out in previous sections of this chapter, there are legal gaps in this particular aspect, a fact which affects even the implementation. Generally speaking, fairness was not properly captured in the case projects under study.

1.7 Conclusion

This study concludes that, the land acquisition legislation in Tanzania is not stringent enough on several matters a fact which brings about challenges in acquiring and compensating partially acquired properties. First the legislation is silent on planning of the meetings that may be conducted, officials in the study areas conducted meetings during the working days therefore causing other land owners fail to attend the meetings. Secondly, the law requires serving notice of intention to acquire land to the owners who will be affected by the decision and that the notice should be delivered to their places of abode or business. However, the law is silent on what should be done when these places are unknown. Thirdly, the law sets the timeframe for yielding possession to be six weeks or in case of urgency less than six

weeks disregarding the fact that the since properties are only partially acquired and because accommodation allowance is only for the affected part, owners will repair their houses while living within the premises. These repairs may require consents and permits which are issued under different laws and cannot be obtained under short notice to enable the affected people to do repairs within the six weeks. Fourthly, the legislation is completely silent on sensitization and awareness creation about the intended project. There is not a single sensitization or awareness word in all statutes with acquisition and compensation provisions, and therefore no guidance about other matters related with sensitization and awareness creation meetings like quorum, location, and presiding personnel.

Furthermore, the law specifies bases and methods for assessing compensation payable and these bases and methods do not tally well with partial property acquisition. For example it is difficult to estimate values of only sections of properties by adopting the market value basis and using the comparative method of valuation. Just like the case of sensitization and awareness creation, the legislation does not define the word compensation, instead only the form of compensation is provided for.³⁶ Another, legal gap is that, unlike for agricultural land where situations for which the land owner can require the acquiring authority to take the whole of his/her property, the land acquisition legislation is silent on buildings. This brings a confusion because while the acquiring authority decides to acquire and compensate for a section of the property which it considers insignificant, for example two rooms, the land owner may consider this portion very significant which warrants relocation to another area. As a result, the land owner may require the acquiring authority to take the whole of his/her property and the acquiring authority may refuse to do so, like it happened in the study areas. Lastly, the legislation ignores the interests of third-party interests like tenants while these are mostly likely to be affected first. This is because as the house decrease in size, for example a room or two are demolished, the first to moved out are going to be tenants so that the owner's family can be accommodated in the same premises.

1.8 Recommendations

This study recommends that, first, the principal legislation governing land acquisition should be amended to have a separate part which guides partial property acquisition. Much as land acquisition seems similar in all scenarios, partial land acquisition pose challenges when general land acquisition legislation is applied. A more detailed and focused treatise is required. Issues of notice, bases and methods, severance and other injurious effects, sensitization and awareness creation, bases and methods of valuation for compensation purpose, categories of acquisition (full or partial), as well as third party interests should be stringently regulated. These are key issues and they need to appear in the principal legislation. This was also emphasized in the ruling of *Southern Range Nyanza Limited v Uganda National Roads Authority v Cowi Limited*.³⁷ Alternatively, guidelines for partial property acquisitions should be created. Secondly, acquiring authorities should adequately plan the project before actual

³⁶ The Land (Compensation Claims) Regulations, 2001

³⁷ *Southern Range Nyanza Limited v Uganda National Roads Authority v Cowi Limited* [2014] HCU 423 (High Court of Uganda)

acquisition since effects of unplanned project can led to severe impact to project affected persons. When land acquisition project is well planned, there will be well defined project executor, compensation distributor and the overall distribution of responsibility together with chain of command. When this is observed, there is low probability of facing difficulties during project execution phase. Whenever the government wants to acquire land proper planning of the programs should be made and preparation of financial, contingent budget to all areas require big attention for implementation of the projects, especially to all property which are to be affected in one way or another, so should conducting a valuation in case that property should be affected so as to avoid delays in implementation of the projects. Proper planning will guarantee effective community participation.

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