

## **Land Titling Processes that Deny and Violate of Women's Rights to Enjoy and Control Land and Property**

### **Background**

Land titling process in Kenya has long been marred with irregularities and long processes whose conclusion is challenged by bureaucracy. Further, the costs for undertaking titling are costly and inhibiting and in instances where these costs have been subsidized, the process is undertaken in a 'shoddy' manner that opens up loopholes that are exploited to the detriment of the enjoyment of socio-economic rights. This especially is on rights with respect to land and housing especially where women are involved.

In consequence, women are often discriminated against in the titling programs. This is because: whereas women's right to own and control land is recognized under the Constitution of Kenya 2010, national laws and relevant international laws that Kenya is party to, this right is constantly under attack from customary laws and practices and individuals attitudes (KLA & FIDA, 2018).<sup>1</sup> It is common practice to register only one name of the household head to be the custodian of all family claims on a parcel or parcels of land. During the titling processes, therefore, this claim is registered in the name of the household head.

In many of our societies today as is the case in Mombasa, the male in a union is the preferred household head and as a consequence, all interests related to land are registered in their names. The process of land adjudication, consolidation and registration, therefore, have helped to crystalize men's absolute ownership of land at the peril of the women, thus violating the enjoyment of these women's right to ownership of land and or co-ownership, where applicable.

### **Characteristics of these incidents**

During the titling process, women's rights to land have been violated through:

- i. Double allocation of parcels in female headed households especially during the titling process.

- ii. Issuance of title to parcel that have anomalies and that do not reflect the true parcel details such as location and geographic location.
- iii. Omission of females as beneficiaries especially in government developed schemes and resettlement programs.
- iv. Over valuation of property and therefore it attracts high rates which the women cannot be able to remit. The land rates subject to these lands are then charged at rates up to as high as 34% of the land value arrived at during the valuation roll. At the lapse of a period of time, these women parcels are then leased off to other persons over nonpayment of land rates.
- v. Malicious caveats are placed over title to land thus preventing the individual from utilizing the parcel as a security for a loan facility.

These incidences have been exacerbated due to lack of awareness on the part of these women. This is because their representation in decision making bodies such as the land control boards and the settlement executive committees is often slim or set at the basic minimum, as stipulated under the Constitution of Kenya 2010. These incidents can be calculated and quantified from the numerous settlements in Mombasa that have received titles under the jubilee government, whose closer audit has led to either the process being challenged or in other instances complaints of being left out.

**What are the effects (direct or indirect) of the type or particular incident on women?**

The manifestation of this form of violation has resulted in illegal and militia-type harassment and threats to women who have championed either individual or collective titling. In the case where such titles are issued, there has been deliberate invasion of the women's property. Consequently, this increases the vulnerability of these women to domestic violence, displacement/eviction and unequal access to credit. This, therefore, curtails the development of these women both socially and financially.

**What is scale of the type or particular incident (any numbers)?**

This particular case is common especially in the new government efforts at increasing the bulk of the country that is titled. Settlements at the Kenya coast, especially in

Mombasa, where approximately 60,000 titles have been issued between the periods of 2013 to 2018, the case is rampant in informal settlements at Mwakirunge, Mwembe Legeza, Ziwa la Ngo'mbe among other settlements.

### **Mention of specific women affected by the incident**

Nyadzua Band a resident of Mwakirunge was a beneficiary of the titling program under phase I that was awarded by the president of the Republic of Kenya on the 31 August 2013. Despite being issued with a title, the details appearing on her title document are not her true name, her identification details are missing and, hence, cannot be substantiated as being the true owner. The parcel positioning as stipulated in the title is for a portion of the ocean yet her parcel is on the main land. Further, her parcel has been allocated to two other individuals who have received titles for these parcels. She now faces eviction from her parcel.

Jumwa Lewa a resident of Mwembe Legeza settlement in Mombasa who was a beneficiary of the titling process at the Mwembe Legeza scheme. She was consequently issued with a title to this land. However, part of the parcel has been hived off by private developers who have since acquired title to the same land. She faces an impending eviction.<sup>2</sup>

- **Background to general type of incident.** (50 words max) : Gender-discriminatory land titling in Mombasa.
- **What are the characteristics of the particular incident?**
  1. Double allocation of parcels in female-headed households, especially during the titling process.
  2. Issuance of title to parcel with anomalies that do not reflect the true parcel details such as location and geographic location.
  3. Omission of females as beneficiaries, especially in government-developed schemes and resettlement programs.
  4. Overvaluation of property and, therefore, subjecting land to tax rates as high as 34% of the land value arrived at during the valuation roll. At the lapse of a period of time, these women parcels are then leased to other persons over nonpayment of land taxes.
  5. Malicious caveats are placed over title to land, thus preventing the individual from utilizing the parcel as a security for a loan facility.
- **What are the effects (direct or indirect) of the type or particular incident on women?** Loss of land tenure, denial of credit, overtaxation

- **What is the scale of the type or particular incident (any numbers)?** Approximately 60,000 titles issued between the periods of 2013 to 2018, especially in informal settlements at Mwakirunge, Mwembe Legeza, Ziwa la Ngo'mbe among other settlements. Two women specifically identified.
- **Mention of specific losses, costs and/or damages for women affected by the incident:** legal fees, loss of livelihood, effects on other rights due to over-taxation, legal and court costs and loss of productive resources
- **Remedy sought by quantifying loss, costs and damages:** [unknown]

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<sup>1</sup> Kevin Mwanza, "Less than two percent of land in Kenya issued to women despite legal gains," *Thomas Reuters Foundation* (2018), at: <https://www.reuters.com/article/us-kenya-landrights-women/less-than-two-percent-of-land-in-kenya-issued-to-women-despite-legal-gains-idUSKCN1GP22B>.

<sup>2</sup> Brian Otieno, "Officers to survey disputed land in Mwembe Legeza," *The Star* (21 May 2015), at: [https://www.the-star.co.ke/news/2015/05/21/officers-to-survey-disputed-land-in-mwembe-legeza\\_c1139040](https://www.the-star.co.ke/news/2015/05/21/officers-to-survey-disputed-land-in-mwembe-legeza_c1139040).