



THE PROCESS OF TRANSFER OF LAND

Well to those who know deal with the sale of properties will tell you that the process of buying a property does not end with paying the seller and executing a Deed of Sale. Most people know that buying a property is not a simple task, but very few appreciate how much more complicated the process of transferring land titles from the seller's name to the buyer's name is. The importance of land title transfer should not be underestimated as it is mostly done.

The right to occupancy of Land in Tanzania includes the right to disposition Grant of right of occupancy includes right to disposition as provided for under Section 22 (1) (i) of land Act, RE 2002, it is provide that (1) A granted right of occupancy shall be- i) capable of being the subject of dispositions.

Land is defined under the section 2 of the Land Act to includes the surface of the earth and the earth below the surface and all substances other than minerals or petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under land and land covered by water;

Section 2, Land Act however defines "transfer" to mean the passing of a right of occupancy, a lease or a mortgage from one party to another by act of the parties and not by operation of the law and includes the instrument by which such passing is effected whereas "SALE" as used in relation to a right of occupancy, means transfer of an interest in or over land on conditions attached to a granted right of occupancy.

The stages of transfer includes the following:

1. CONDUCT SEARCH.

This is the most crucial part of the transaction and especially before doing payment to see if there are any defects or incumberances It is an essential rule of the conveyancing practice that a buyer of land must make sure that the seller or vendor has a valid title to the land in order to have proper notice of all encumbrances. The Rule of caveat emptor (buyer beware) plays a significant role in transfers of land. Under section "S.34 of Cap 334 it is provided that; Every person acquiring any estate or intent in any registered land shall be deemed to have actual notice of every subsisting memorial relating to such land in the land register at the moment when he acquires such estate or interest and, in the case of subsisting memorials inscribed in those parts of the land register which contain the description of the land and the particulars of encumbrance, of any filed documents to which those memorials refer.



2. ON SITE INSPECTIONS OF PROPERTY

You see the thing is, in transfers the seller has no obligation to volunteer information. The buyer should make enquiries on the existing disputes over the property e.g. ownership of fences, right of way, ownership & maintenance of roads etc. it is best to visit the site before moving with the sale so as to satisfy yourself with the transaction.

3. VALUATION REPORT

A government valuer must determine the value of the property and, where necessary, establish a cadastral value and prepare a cadastral plan. The Chief Government valuer does the valuation but if the seller or buyer has had one done by a registered valuer he normally just copies in the reported figure. However, the valuation report must be approved by the Chief Government Valuer. The valuation will help with the determining of the amount to be paid for the CGT (capital gains Tax).

The valuation should reflect the estimate value of the plot for it to be considered. Under section 41 (3) of the Land act it is provided that “ where the commissioner is of the opinion that a right of occupancy in Land is to be transferred at a significant under valuation is to be granted at a premium which is significantly below the value of that lease in the open market, the commissioner may require the parties to the disposition to obtain, at the expense of the proposed transferee, a valuation of that land from a qualified valuer whom the Commissioner shall nominate, and consent shall not be granted to any disposition to which this subsection applies at price which is less than the value put upon the land by the nominated valuer”

4. DRAWING A SALE AGREEMENT

A lawyer usually prepares and notarizes the sale agreement, notarization of the sale agreement is mandatory. The process can be delayed if the seller fails to provide all the necessary documents for the preparation of the sale agreement. The process can also be delayed if the parties take a long time to negotiate and execute the documents. The law has provided for mandatory condition that contracts relating to Land must be in writing; Section 64 (1) (a) and (b) “a contract for the disposition of a right of occupancy is enforceable in a proceeding only if the contract is in writing or there is written memorandum of its terms; the contract or the written memorandum is signed by the party against whom the contract is sought to be enforced”



5. DRAFT DEED OF TRANSFER

There are forms such as land forms no 35 and no. 30 of which needs to be signed by the parties and their advocate ,where necessary, to move the registration of the respective plot. These forms once duly filled are then presented to the Respective Municipalities and later on to Ministry of Lands and Human Development so as to facilitate the transfer process.

6 .GRANT OF TITLE DEED

Once the documents are presented to the respective authorities and the taxes as well as the fees are paid up, depending on if there are caveats or corrections etc the title deed will be issued. You can then have what you label as “your land” or “my kiwanja”. Due to the complicated nature of the transaction we advise that you seek an assistance from your lawyer.