

The impacts of poor Governance on Land Development Applications Processes

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1.0 Introduction

Access to land and other natural resources is an important basis for the livelihood of people in the country. Such access should be stable and secure if it is to provide an opportunity for economic growth and act as a vehicle for investment. Land management is concerned with the stewardship or custodianship of land both for the present and future generations. It has, therefore, to incorporate the concept of sustainable development, which is the use of available resources now without compromising the use of the same resources by the future generations.

The key objective of land management is to ensure there is stability and sustainability in relation to division of land resources and its subjects. Land management is implemented through land use planning and the processes through which the tools of land management are implemented are called land administration. Land administration is used to refer to those public sector activities required to aid the process of alienation, survey, valuation, registration, transfer, development and use of land. In most countries, these processes are administered by the public sector through the land administration structures (UN-ECE ,1996 and 2005). In the recent past, performance evaluation has been tied to the way organizations are governed. This is no exception in the case of land administration institutions.

This paper highlights the relationship between these two variables and shows, that where there is poor governance, land development application processes are greatly hampered thus causing time and costs overruns amongst other impacts.

1.1 Physical Planning

In seeking to create a strong economy, every country must implement strategies for planning and development so as to improve the infrastructure and create a better environment. Physical planning is the process whereby changes to the environment can be brought about through formal procedures. It is said to be the process of allocating resources, particularly land, in order to achieve maximum efficiency while respecting the nature of the environment and the welfare of the community (UN-ECE 1996). GOK (2008), notes the importance of planning in the recognition that, for sustainable development to take place, a balance should be negotiated between the economic development, community development and ecological development processes. This is particularly so in the modern cities, towns and regions of the world. Therefore, urban planning is recognised as an important tool in guiding urban growth and development, through the appropriate use of land and similar resources. The manner in which physical planning is conducted depends on the country's political system but in most cases the responsibility lies with the organs of central and local government.

1.1.1 The Role of Planning in Sustainable Development

The importance of physical spatial planning may be summarized as:

I) Identification of resources

Planning deals with human activities while at the same time addressing the various needs of man. Therefore, the main objectives of regional physical development planning are to identify the region's resources, their potentials, levels of utilization, existing problems, challenges and opportunities.

II) Spatial development

Regional physical development planning involves an arrangement of spatial patterns over time, and is based on the premise that well-developed urban centers can not be treated in isolation of the peripheral regions around them.

III) Harmony between all variables

Physical planning process has to aim at balancing of population and industry, rationalization of transport services and routes, and securing of a stable and fair distribution of service facilities. As a result, good planning should provide a tolerable standard of living-space for the inhabitants. It should further create counter-magnets for employment in the region that make great contributions to better physical environment in respect of the existing and new developments.

IV) Infrastructure provision

Physical planning is also concerned with the provision of the necessary infrastructure with appropriate legal regulations including by-laws relating to the quality of building and construction. This is achieved through enforcement of development conditions that are associated with land development.

1.2 Land use planning and Land Management

Land use planning is the art and science of managing land through regulating or controlling what use land is put into. It includes location, intensity and amount of land designated for various uses and functions. Land use planning is critical in urban areas due to multiple challenges in these areas. Rural areas are also governed by land use controls through certain legislation. Land use planning aims at economic efficiency in the use of space without compromising the health, safety and security of the residents. It is achieved through; Development plans and land use/development controls which include town planning regulations, zoning regulations, building codes and land development application like subdivisions, building plans, extension of leases, and change of user

This paper uses subdivisions to show how the process may be affected by poor governance.

1.2.1 Land Subdivision Process in Kenya

Subdivision is one of the land development processes whose aim is to release land to the market, while at the same time affording revenue for the government and property owners. The process also contributes to infrastructure provision such as roads to adoptive standards, street lighting, sewerage and drains amongst other. Formal processing of land

subdivisions also acts as a deterrent to emerging informal land markets which lead to urban sprawls and blight. The process of subdivision is guided by legislation as depicted in The Physical Planning Act 1996 from section 31 to 40. This clearly stipulates the process through which development applications are approved, the parties involved and the various ways to seek redress if any of the respective parties is aggrieved by the actions of approving agents. The process is handled by three institutions through processes enumerated below:

a) City Planning Department

Development applications are lodged with the local authority within whose jurisdiction the property falls in the form prescribed in the fourth schedule of the PPA 1996. In the case of Nairobi, this is the City Planning department at the City Council of Nairobi. This form, called PPA 1 must be submitted by a registered Physical Planner. In the case of subdivision of land, the proposed subdivision scheme duly signed by a planner, a land surveyor and the owner must be submitted in a linen material (1 copy) and blue print (5 copies) to the local authority. Such a plan must show particulars and purpose of development, the means of access and open spaces within the scheme. Such an application must be accompanied by the copy of the title to justify the owner, user and term and the payment of all outstanding rates.

Internal circulation is done to various departments such as roads, rates, public health and water and sewerage. If application is acceptable, it is approved subject to certain conditions such as provision of water to the subplots (in case of subdivision), construction of roads, drains, sewer and street lighting to adoptive/non-adoptive standards and surrender of land required for public utilities to the government free of charge. Communication is done to the applicant where the application is rejected giving reasons for the rejection

b) The Department of Lands

The approved scheme is forwarded to Commissioner of Lands. The Commissioner of Lands forwards the same proposal to the Directors of Physical Planning and Surveys for their comments before approval is accorded. If the comments are favourable, the Commissioner accords provisional approval subject to conditions given by local authority and/or others he may deem fit. This provisional approval acts as an authority for the owner to engage a surveyor to carry out the cadastral survey works in relation to the development proposal. The approval also acts as a request to the local authority to accord final approval to the development proposal if all the conditions have been complied with.

c) The Department of Survey

The Survey work gives resultant deed plans in the case of subdivision or a single deed plan in the case of other development applications like change of user and extension of lease. Deed plans are the output in the surveying process where the land is registered under Registration of Titles Act. Under Registered Land Act Cap 300, however, the Registry Index Map (RIM) is the product of the cadastral survey process. These documents facilitate the registration of the resultant titles or title as the old title is surrendered in exchange of the new title(s).

d) Issuance of Title

This is the last stage of a land subdivision process in Kenya. In cases of subdivision without change of user, certificate of titles are issued as stipulated under sec 70 of the RTA or issuance of new leases through the process of surrender and re-grant is done if the property falls under RLA. The process of cadastral survey approval by the Director of Surveys is a lengthy one which, just like the processing of an approval or title may take an indeterminable period of time as the work has to go through many stages.

1.3 Governance Issues in Land Development Processes

FAO (2007) defines governance as the action or system of governing. Governance is the way societies are managed and how the competing priorities and interests of different groups are reconciled. Governance is not one sided as it has the governor and the governed. Citizens, who are the governed, participate in decision making by carrying out their responsibilities. The governor keeps its part of the bargain by creates favourable conditions for growth. The governor (usually the state and its entities) is supposed to lay down rules and follow through an accountable process. Governance is not the same as corruption. However, corruption is an aspect of poor governance just like, abuse of office, deprivation of rights and services, land grabbing, environmental degradation.

There are two forms of corruption that touch on land administrative processes, namely, state capture where the processes and land resources are greatly dictated by certain groups of people like politicians, leaders and cartels. These hold the state at ransom and are common in cases of land grabbing, approvals of irregular schemes amongst others. The other form of corruption is administrative corruption often perpetuated by staff and employees and usually manifested through loss/manipulation of records, absence from work, abuse of office, rudeness to customers and demands for kickbacks in exchange of service. Good governance on the other hand is manifested through integrity, accountability and probity. GOK (2007) identifies the following as the governance challenges that have bedeviled the land delivery services in Kenya.

- Complexity in the processes, which breeds uncertainty, increases costs and encourages fraud.
- Bureaucratic approval processes for land development applications, leading to indeterminable completion time and costs. This encourages the growth of informal land markets with major losses of revenue to the government.
- Manual information systems, often characterized by loss of documents which slows down the approval process.
- Inefficiency as evidenced by the indeterminate length of time it takes to complete the transactions and the number of stages a transaction has to go through
- Arbitrary fees charged for the development applications making it hard for investors to project the costs

1.4 Methodology

This paper is based on research that was carried out by one of the authors in 2006 -2008, whose findings are documented in an unpublished PhD Thesis at the University of Nairobi. The research sought to evaluate how land development processes are carried out. The findings from the research will, therefore, be used as a basis in the paper to derive the emerging governance issues that affect the processes of subdivision in Nairobi.

In an attempt to evaluate performance, three key performance indicators were adopted by this study. They are:

- Effectiveness measured in terms of output
- Efficiency measured in terms of time taken.
- Quality assessed through customer satisfaction.

Fifty cases of subdivision applications were sampled from 973 applications made between 2000-2005. On the consumers of the services, a total of 10 registered physical planners were sampled from a total of about 60 who practice in Nairobi as provided by the Kenya Institute of Planners, 15 land surveyors were chosen from a total of 66 registered by the Land Surveyors Board, 10 developers were sampled from a list of 50 given by the Kenya Private developers Association. 15 Conveyancing lawyers or their clerks were also picked to form part of the sampled population.

The data collection instruments used included questionnaires, Searches and perusal of files in the Department of Lands headquarters (Ardhi House), Department of Surveys and City Council of Nairobi, City Planning Department and Personal interviews: services in the institutional offices under study

1.5 Findings

1.5.1 Effectiveness

Out of a total of fifty (50) cases sampled, seven were rejected on technical grounds. Forty three (43) cases were therefore traced through the processes up to the final stage. Out of these, 61.4% were accorded provisional approval and were therefore forwarded to the Lands Office. In the case of the Lands Department, a total of nineteen (19) cases were received with sixteen (16) being approved representing 84.2%. These were then forwarded to the Survey Department for deed plan preparation with an approval rate of 75.0%.

It should be noted that whereas the output level may be high in separate departments, the levels nosedive when one takes the process whole some. The study went ahead and followed up the cases from submission to title registration so as to establish the overall effectiveness levels of all the institutions which was found to be at a mere 11.4%.

1.5.2 Efficiency Rates

Time taken for an application to go through in each of the departments was used as the parameter to measure efficiency. This was addressed separately from a departmental point of view and as an overall process for the cases that went up to title registration. As such the efficiency levels were compartmentalized based on the approval time as follows:-

- At City Planning, time is measured from submission to first (provisional approval) like in the case of subdivisions.
- At Lands Department, the time is taken from when title issuance is initiated (instruction) to the end.
- At Surveys, time is measured from when records are received up to approval (authentication).

On the overall efficiency, the time taken refers to the total time taken from the date of application at City Planning department which is the entry point to the time the title is issued. This is done by taking those sampled cases that went all through to title. The findings on efficiency are as tabulated in Table 1.1 below.

Table 1.1 Efficiency Rates

SUBJECT	CITY COUNCIL OF NAIROBI	DEPT.OF LANDS	DEPT.OF SURVEYS
SUBDIVISIONS	2 – 4 Months	6 Months	1-3 Months

Source: Mwangi (2008)

On the overall efficiency rates (from Submission to Title), subdivisions were found to take 20-29 months.

The researcher also sought the views of the consumers on the length of time it takes to have their subdivisions applications approved from submission to title. The detailed responses are presented in Table 1.2:-

Table 1.2: Efficiency Levels from Respondents

Service	Duration	Percentage of respondents
Subdivision (Submission to title issuance)	9 months to 6 years	48%
	No experience with subdivision	6%
	No response	6%
	1 to 9 months	40%

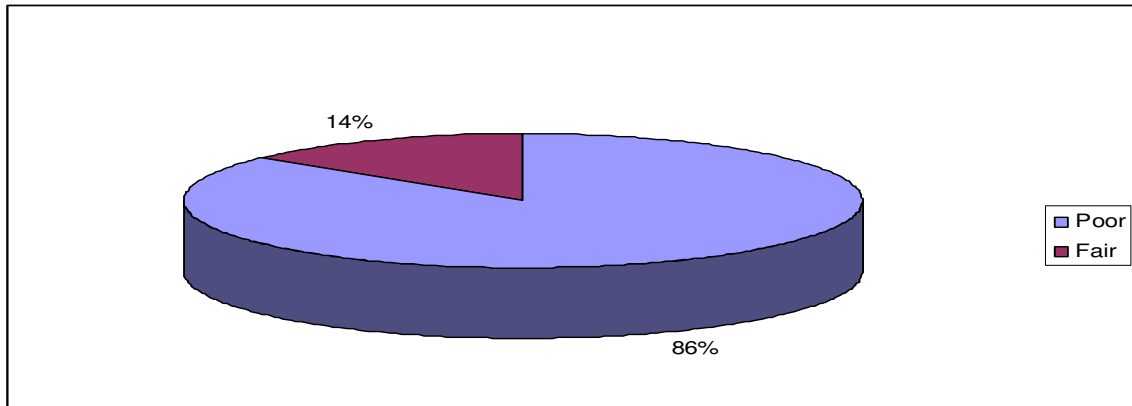
Source: Mwangi (2008)

From the above findings, subdivision approvals take between nine months and the longest is six years. This is an indeterminate time frame that may be due to the stringent approval conditions that a developer must meet. These conditions are costly and may therefore delay the subdivision approval process.

1.5.3 Quality of Service

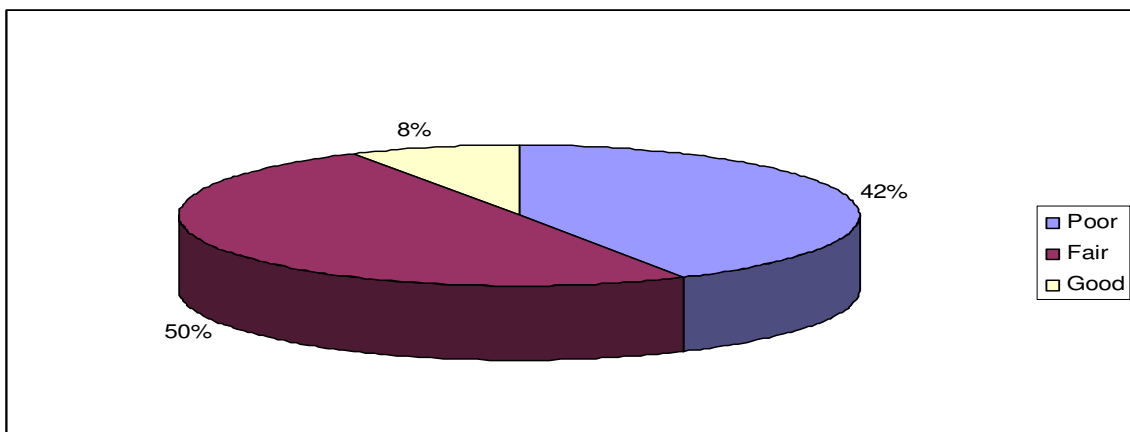
In the case of institutions dealing with land administration the researcher sought the consumers sought opinion on rating of services and departments within the institutions, with the following findings:

Chart 1.1: City Planning Service Rating



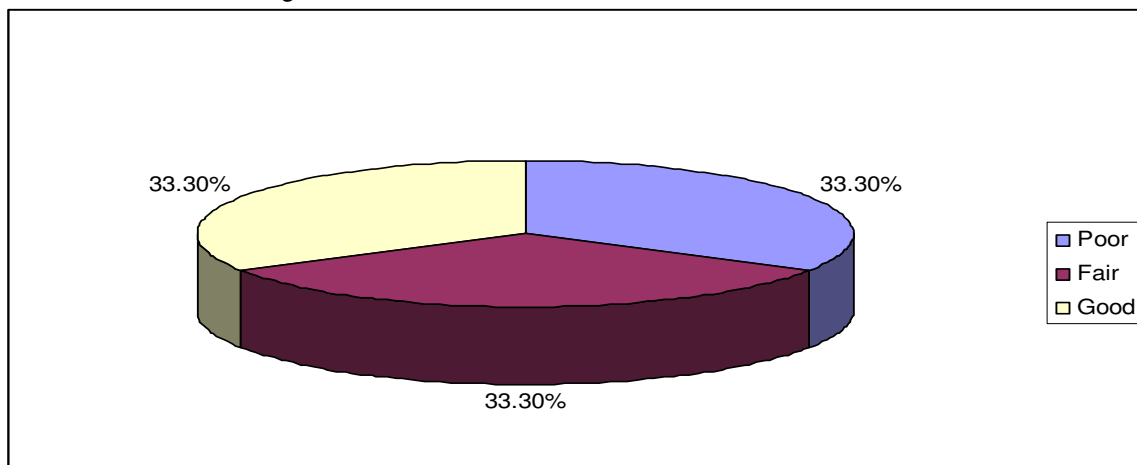
Source: Author (2008)

Chart 1.2: Service Rating at Surveys



Source: Mwangi (2008)

Chart 1.3: Service Rating at Lands



Source: Mwangi (2007)

From the above ratings on quality, on the overall, over 50% of the respondents felt that the service provision is poor, citing low levels of completion of the work, the lengthy processes, indeterminate time frame and poor reception from these institutions. This, it

was noted, more often than not, acts as a trigger towards corrupt tendencies, as consumers seek short-cuts to have their applications approved. This leads to low morale amongst service seekers and impacts negatively on the land administration institutions in Kenya. Moreover, poor image negatively affects investor confidence, especially where the investments are premised on land as a resource. Judging quality on the basis of worst and best sections helps the sections to mirror themselves and concentrate on areas that drag them behind. Of all the three departments, City Planning performed the worst with 86% rating it poor.

The researcher analyzed the reasons behind the rating by asking the respondents to give the key problems encountered in each of the department and suggest on ways to improve the service in the departments. The problems were narrowed down to three issues as they are the ones that were cited by all the respondents, though with different frequencies. Theses were:

- Corruption stood at 87% at the City Planning department and 33% at the Lands department
- Poor work attitude manifested through absenteeism and poor reception of clients was rated at 85% at City Planning, 62.5% at Director of Surveys office and 73% at the Lands department
- Lack of modern information systems 57% at City Planning department, 62.5 % and 26.6 at Survey Land departments respectively

1.6 Conclusion and Recommendations

This paper has shown that there is a direct relationship between governance and the service delivery in the land sector in Kenya. Reforming institutions dealing with land delivery, therefore, is the first step towards good governance in the land sector. The authors, therefore, recommend the following:

I) The need to reform institutions

The World Bank in its doing business series 2005-2007, has kept tabs of the impacts of embracing institutional reforms in the land sector. Mwangi (2008) enumerates, by use of standard indicators, the best and worst practices in the land sector in different countries. Using the scenario analysis approach, it is imperative that where good management and reforms are embraced, the service is drastically improved. Examples of where reforms have taken place with land management services taking shortest time include Norway (1 day to process titles), Sweden (1 day) against the worst like Nigeria (956 day to process a title) and Kenya (180 days).

II) Universally acceptable management standards

This is on realization that institutions dealing with land can not operate in isolation of global standards. Therefore, standards such as Management by Objectives, Total quality Management and ISO must be embraced so as to able to effectively compete with others in the world. This enables institutions to set their targets on services and processes and their performance is measured against such targets

III) Managers as change agents

The role of managers or leaders as change agents of any organization has been articulated since they are the heart beat of the organization. Change management is now an acceptable approach in turning around organizations. Change, however, may not be easy as most employees often resist change as it destabilizes the status quo and it

removes ambiguity and uncertainty. Managers should, therefore, be firm in implementing capacity and processes changes

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