

**LEGAL CONUNDRUMS IN COMPENSATING PARTIALLY ACQUIRED
PROPERTIES IN TANZANIA: THE CASES OF KILAKALA WARD IN DAR ES
SALAAM REGION AND UFUKONI WARD IN Mtwara REGION**

DONALD MASUNGA

**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS IN LAND
ADMINISTRATION AND MANAGEMENT
DEPARTMENT OF PRIVATE LAW
THE OPEN UNIVERSITY OF TANZANIA**

2024

CERTIFICATION

The undersigned certify that they have read and hereby recommend for acceptance by the Open University of Tanzania a dissertation entitled, “**Legal Conundrums in Compensating Partially Acquired Properties in Tanzania: The Cases of Kilakala Ward in Dar es Salaam Region and Ufukoni Ward in Mtwara Region**”, in partial fulfillment of the requirements for the award of the Degree of Master of Laws in Land Administration and Management (LL.M LAM) of the Open University of Tanzania.

.....

Dr. Rindstone Bilabamu Ezekiel

(1st Supervisor)

.....

Date

.....

Dr. Saphy Bullu

(2nd Supervisor)

.....

Date

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Signature

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Date

ACKNOWLEDGEMENT

I owe special appreciation to my supervisors Dr. Rindstone Bilabamu Ezekiel and Dr. Saphy Bullu, who tirelessly guided me throughout this study. I would also like to extend my sincere gratitude to several other Open University Colleagues who assumed the role of mentors during my study.

My sincere thanks also go to Dar es Salaam Metropolitan Development Project officials at Temeke Municipal Council, land officers at Temeke and Mtwara Mikindani Municipal Councils, and Ward Executive Officers at Kilakala ward, Temeke and Ufukoni ward, Mtwara who offered me great assistance during data collection. They were key informants in my research by providing invaluable information on my study areas and case studies.

I am indebted to Temeke and Mtwara Mikindani Municipalities' administration for allowing me to carry out my study in their areas of jurisdiction. They include the Regional Administrative Secretaries, District Administrative Secretaries, and District Executive Directors.

I would like to thank my respondents (Project Affected Persons) in the aforementioned area, that is, Kilakala ward, Temeke and Ufukoni ward, Mtwara for participating in my research and making it possible.

Lastly, I would like to thank my heartfelt appreciation to my lovely family for bearing with me and encouraging me to finish this postgraduate programme.

ABSTRACT

This study is about assessing legal challenges for compensating properties which are only partially acquired during compulsory land acquisition in Tanzania. The study objectives were to explore the existing legal gaps in the laws that govern partial property acquisition and compensation and to examine 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, thus; the Dar es Salaam Metropolitan Development Project in Temeke municipality and the Mnazibay - Dar es salaam Gas Pipeline Project in Mtwara. Data is analyzed using a mixture of methods including statutory 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: total absence of the phrase “sensitization” or awareness creation, unregulated timing of the sensitization meetings, lack of clarity on notice to acquire land, improper bases and methods used to assess compensation, absence of the definition of the word “compensation”, lack of fairness of the acquisition process and compensation, and infringement of tenants’ rights without compensating them. The study recommends either amendment of the existing principal legislation governing compulsory land acquisition to address pertinent issues of partial property acquisition; or making guidelines to guide partial property acquisition specifically.

Keywords: *Legal challenges, compensating properties, compulsory land acquisition,*

Tanzania

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The Urban Planning Act No. 8, of 2007

Tanzania Investment Act, No.10 of 1997

Valuation and Valuers Registration Act, No.7 of 2016

Subsidiary Legislation

The Land (Assessment of the Value for Compensation) Regulations, 2001

The Land (Compensation Compulsory land acquisitionims) Regulations, 2001

The Village Land Regulations, 2001

Valuation and Valuers (General) Regulations, 2018

Other Instruments

The Constitution of the United Republic of Tanzania Cap 2 (As amended from time to time)

Universal Declaration of Human Rights, 1948

The National Land Policy of 1995

LIST OF CASES

Agro Industries Ltd v Attorney General [1994] T.L.R 43

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Ellis v Home Office [1958] 2 QB 135

Estate of Dame Bernice Lake QC v Attorney General of Anguilla [2022] UKPC 0024

James Abiud Nyakisange v Tanzania Electricity Supply Company [2017] T.L.R 144

National Bank of Commerce v Suleiman Nassor Ally [1989] TLR 67

Nominees Pty Ltd v Department of Economic Development Jobs Transport and Resources [2015] VCAT 564 (New South Wales)

Pener v King [2017] referring to Rostine v City of Hutchinson [1976], Kan 320 (Supreme Court of Kansas)

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

The Attorney General v Sisi Enterprises Ltd [2001] T.L.R 47

LIST OF ABBREVIATIONS

CLA	Compulsory Land Acquisition
CRO	Customary right of occupancy
DMDP	Dar es Salaam Metropolitan Development Project
FAO	Food and Agriculture Organization
GRO	Granted Right of Occupancy
Ibid	In the same place
Inter alia	Among other things
MLHSD	Ministry of Lands, Housing and Human Settlements Development
PAP	Project Affected Persons
Supra	The phrase means “above”
UN	United Nations
URT	United Republic of Tanzania

CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE PROBLEM

1.1 Introduction

Law is one of the strongest tools for development that seeks to promote good public and corporate governance by holding its actors responsible for their actions. Law can provide the means by which to determine accountability, regulate conduct and general behavioural tendencies of our leaders, and boosting the role of institutions and individuals in the private and public sphere of life particularly in the provision and delivery of services and goods.¹ It has been argued before that, one of the essential features of the rule of law is that legislation be clear and be able to be understood by those who are bound by it. That means, legislation should be user-friendly and accessible, should contain provisions that are precisely drafted, and should contain coherent provisions.² A number of scenarios can lead to a law being thought as unclear, these include: when the purpose and intended operation of a provision is not clear, when terms that are not clearly defined or not defined in the legislation in which they are used or are defined in a way that conflicts with an existing, established definition of the term, and when legislation that does not clearly express the nature of the power given to the recipient and does not provide guidance as to how the power should be exercised.³ This means that, in order for a legislation to be

¹ Makaramba, R. V. (2003). *Good Governance and the Rule of Law*. Dar es Salaam, Tanzania : Commission for Human Rights and Good Governance.

² Office of the Queensland Parliamentary Counsel. (2013). *Principles of good legislation: OQPC guide to FLPs - Clear meaning*. Queensland : Office of the Queensland Parliamentary Counsel.

³ Ibid

considered clear, central terms need to be clearly defined, the scope of application of the terms need to be set, consistent use of the terms be observed, and terms should be user-friendly.

Land and land rights have a very real impact on virtually all aspects of social and economic development.⁴ Land laws therefore, should be as clear and comprehensive as possible so that their implementation has positive impact on the lives of the people. Complaints regarding ambiguities in Tanzanian land laws by both researchers and practitioners, have led to frequent amendment of the principal land legislation, i.e. Land Act No.4 of 1999 and others.⁵ On land acquisition and compensation, this is partly manifested by complaints from Project Affected Persons concerning unfair and inadequate compensation and complaints from law implementers regarding legislation not being stringent enough to warrant assessment and payment of fair and adequate compensation. As it happens, law makers and law implementers are two different groups with little or no contact at any point in time.

This study seeks to assess gaps on the legal framework that governs land acquisition and compensation with a view to identifying the gaps in the legislation, assessing challenges facing officials in implementing the said legislation by examining real life scenarios using

⁴ Geir Sundet, *The 1999 Land Act And Village Land Act: A technical analysis of the practical implications of the Acts*, 2005

⁵ Including property valuers, land officers, lending institutions, and Non-Governmental Organizations

case study (land acquisition and compensation exercises), and suggesting the way forward. The real life scenarios selected are based on partial property acquisition because this is the area that has received much complaints on account of their provisions not being detailed enough to enable smooth operation of the land acquisition process.

1.2 Background to the Problem

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, community opposition, valuation disputes, negotiations and communication, public relations, environmental and zoning issues, project funding and budgeting, economic impact assessment, mitigating social impact, timeline and delays, 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, gaps in the regulatory framework, which is the focus of this study, may lead 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.⁶ For instance, partial property acquisitions usually present many challenges due to severance which is a problem in itself and occurrence of injurious effects. It therefore calls for stringent provisions or even a separate statute. This means that, some types of land expropriations, for example, partial property acquisitions require a detailed or even a separate statute to guide them, otherwise, there would be many gaps in the said law.

As it has been defined above, 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.⁷ 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.⁸ The most common purposes for which powers of eminent domain are invoked to acquire private lands include

⁶ In this case The Land Acquisition Act No.47 of 1967 [RE 2019]

⁷Bell 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

⁸Ndjovu C., Compulsory purchase in Tanzania: Bulldozing Property Rights, PhD Thesis, KTH-Stockholm, 2003.

infrastructure development, urban planning, land use planning 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.⁹

The right to fair and adequate compensation is a fundamental principle that underpins land acquisition processes.¹⁰ 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.¹¹ 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

⁹Walacik, 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.

¹⁰ Arul V.M. and Murali K., A Critical Review on Land Acquisition and Valuation Process across the World, *Journal of Mechanical and Civil Engineering*, 2015, Vol.12, No.5, pp.9-14

¹¹Ghimire, 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.

with compensation that is fair, equitable, and reflects the true value of the land and associated losses.¹²

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 right, people who are deprived of their property must be adequately compensated.¹³ On top of adequate compensation, other societies insist on fair and prompt compensation.¹⁴

In Tanzania, the right to fair and adequate compensation is provided in the Constitution, Land Policy and laws that governs land, for example the Land Act.¹⁵ Specifically, the Constitution says:

“Every person is entitled to own property, and has a right to the protection of his property held in accordance with the law” and 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”.¹⁶

This is also contained in the Tanzanian Land Policy of 1995 which emphasizes on the importance of paying compensation to persons whose rights to property are infringed in any way. The policy says the rights and interests of citizens in land shall not be taken without due process of law and that full, fair and prompt compensation shall be paid when land is acquired.¹⁷

¹²Ibid.

¹³ Universal Declaration of Human Rights 1948, Article 17.

¹⁴Ibid.

¹⁵ No.4 RE 2019.

¹⁶ Constitution United of the United Republic of Tanzania 1977 (as amended from time to time), Article 24.

¹⁷ National Land Policy of 1995, Article 4.1.1 (i) c&d

In Tanzania, the right to compensation seems to be a problematic issue in land administration relative to all other rights.¹⁸ In spite of the global 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 system.¹⁹

Developing countries' governments, including Tanzania, are under an increasing pressure to undertake urban development projects and provide public services amidst an already high and increasing demand for land.²⁰ The Tanzania government for instance has over the years initiated and implemented various infrastructure projects.²¹ A number of urban upgrading and infrastructure projects have been implemented in Dar es Salaam and in upcountry cities and municipalities since 2005 to date. Six separate infrastructure projects, including local roads and surface water drainage systems are being constructed in Temeke with the aim of, among other things, eliminating persistent stagnant water ponds.

1.3 Statement of the Research Problem

There are widespread objections against compensation especially for partial property acquisition whereby, the acquiring of only a part of the affected land/property is

¹⁸Komu 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.

¹⁹Ndjovu (2003) and Ndjovu (2016).

²⁰FAO (2018); Chan (2003).

²¹ These include Community Infrastructure Upgrading Programme (CIUP) in 2005, City Strategy for Upgrading Unplanned and Un-serviced Settlements in Dar es Salaam in 2007, and Dar es Salaam Metropolitan Development Projects (DMDP) in 2011.

considered as unfairly compensated by most Project Affected Persons. Acquisition of a small part of the property comes with various challenges. The first challenge could be methodological complexities of estimating the open market value of this small portion of the property (partial property valuation). Secondly, unfair compensation for the adverse effects resulting from the partial acquisition in terms of the losses incurred by Project Affected Persons who remain with partial properties due to lack of full compensation and resettlement schemes. A third challenge can be associated with livelihood distortion after partial property acquisition and compensation exercises emanating from severance and other adverse effects (including injurious affection). Professionals in the lands sector link these challenges with legal gaps in the land acquisition legislation.

1.4 Literature Review

This section gives a brief overview of literature on land acquisition and compensation. It specifically reviews prominent journal articles on the subject and authoritative authors on partial property acquisitions from the websites. Towards the end of the brief review of each source, a gap is identified so as to inform readers what this work intends to explore in relation to the selected sources and the subject at hand.

Shumsky M., defines partial compulsory acquisition as one where only a portion of a property is taken by the state for a purpose considered a public one.²² The author explains

²²Shumsky, M. (2021). *Conveyancing*. www.stacklaw.com.au/news/conveyancing/what-is-partial-compulsory-acquisition (Accessed 13th May 2023)

partial land acquisition as practiced in New South Wales of which procedure starts by issuing of notice to land owners and concludes by compensation payment. He mentions inclusion of a drawing of the section of the property that is to be acquired as an important content of the notice, which will also show dimensions of the land and new boundaries which will be imposed on the property. A plan is then prepared, endorsed and registered later. The author also explains the appraisal process in a these types of acquisitions. According to the author, the most common way to estimate property values for partial acquisition in New South Wales is by using a *before and after* method. With this method, the value of the whole property is estimated first, then the value of the remaining property is determined. The difference between these two values is the compensation to be paid. Sometimes the part of land that is to be acquired may form an important portion of the whole property and therefore the impact of the partial property Acquisition of the residual land needs to be considered when deciding the amount of compensation owed by the property owner. According to the author, in New South Wales, injurious affection of the partial acquisition on the residual land ought to be evaluated. This is also the case for other parts of Australia, for example Western Australia.²³ Negative effects might be many, for example depreciation of value of the remaining land, rise of the costs of using the remaining land, limiting activities on the remaining land, deterring purchasers from buying land, and interference with amenity or character of the remaining land. There have been cases where the property owners whose land have been partially acquired, contested

²³Law Reform Commission of Western Australia (2007)

the acquisitions on grounds of partial consideration of severance of the remaining land.²⁴ Sometimes the acquiring authority will acquire the whole property, although they only need part of it. This happens when the effects of the project on the residual land is so significant that it necessitates acquisition of the whole property, for example when the partial acquisition makes the remaining land virtually inhabitable by the passing of a busy road very close to the property. This study will bring to light whether issues of injurious affection and possibility of acquiring whole properties are made aware to the project affected persons by the acquiring authorities in Tanzania. Non consideration will be taken to amount to unfair procedure. Nevertheless, Shumsky's work focuses on partial property acquisitions in New South Wales, Australia. This study intends to study the phenomenon from the Tanzanian perspective.

Bell A., & Parchomovsky G., emphasizes on the problems emanating from partial property acquisitions.²⁵ The main problem being the creation of suboptimal, and even unusable, parcels. Additionally, partial takings cause assessment problems that do not arise when parcels are taken as a whole. The authors assert that current law fails to resolve these problems and can even aggravate them. They provide an innovative solution that remedies the limitations of existing partial takings doctrines. That is, the government should give owners whose property is partially taken the power to force the government

²⁴Nominees Pty Ltd v Department of Economic Development Jobs Transport and Resources [2015] VCAT564 (New South Wales)

²⁵ Bell, A. and Parchomovsky, G., Partial Takings. Columbia Law Review, Vol. 117, p. 2043, 2017

to purchase the remainder of the lot at fair market value. Exercise of this power by the private owner would lead to the reunification of the land in its pretaking form while transferring title to the entire parcel to a new single owner in this case the government. The article provides a solution which is included in the Tanzanian legislation, but which is rarely adhered to. The paper therefore, does not delve into the details of implementing the provision of forcing the acquiring authority to acquire and compensate for the whole property where necessary.

According to **Vincent et al**, expansion and development of urban areas calls for expropriation of land, which, calls for resettlement of people who occupy the acquired land.²⁶ Land expropriation and resettlement may also be needed to make the lives of the people who live in slums better. Therefore, efforts aimed at ensuring sustainable urban development has to make sure that processes for compulsory land acquisition are adequate so that resettlement is not an impediment to the much-desired urban development. It is advocated that, people who lose their property or means of livelihoods should be made equal partners when implementing urban development programs. The author also reiterates the two key principles that govern land acquisition and compensation, (i) acquisition must be done for public interest and (ii) the principle of equivalence. The first principle removes the possibility of compulsory land acquisition being done for private interests of some individuals. Phenomena that are deemed public purpose are outlined in

²⁶ Vincent, R., Luciano, B., Karen, S., & Elena, L. J., *Urban Land Acquisition and Involuntary Resettlement: Linking Innovation and Local Benefits*, 2017, Washington, DC: World Bank.

the Land Acquisition Act.²⁷ According to this section, land required for use by government is considered to be needed for a public purpose. Other uses falling under public purpose include general public use, government scheme, development of agricultural land or for provision of land for agricultural, industrial, or commercial development, sanitary improvement, social services or housing, laying out of a new city, municipality, new township, or minor settlement, or extension and/or improvement of a new city, municipality, new township, or minor settlement, development of airfield, port or harbor; mining for oil or minerals; or use of the land by the community or a corporation in the community; use of the land by any person or group of persons for public interest.

The second principle requires that the projected affected persons should neither benefit nor suffer as a result of the acquisition process.²⁸ This means that, the PAP should neither be worse off nor better off as a result of the land acquisition exercise.²⁹ At the end of the land acquisition process which culminates into compensation payment, the victim of compulsory land acquisitions should be in a position similar to the one he/she was in before the acquisition process.³⁰ However, the author accords a lot of emphasis on the principles of compensation and the question of fairness and adequacy. The current study seeks to

²⁷Cap 118 [RE 2019], s 4

²⁸Ahene R. & Mundeme S., Valuation Handbook, 2nded, Tropical Research and Development, Gainesville, (1996).

²⁹Komu 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 & Ndjovu C., Compulsory purchase in Tanzania: Bulldozing Property Rights, PhD Thesis, KTH-Stockholm, 2003.

³⁰The Land Acquisition Act, Cap 118 [R.E. 2019], s 11(3)

examinewhether fairness and adequacy can be attained given the existing regulatory framework.

Komu F., examines the principle of compensation that requires payment of fair, full and prompt compensation to the victims of compulsory land acquisition in Tanzanian land expropriation projects. He asserts that the said expropriations are neither fair, full or prompt.³¹ His analysis is based on objections raised by project affected persons and their main complaints. The author highlights that, the Tanzanian legislation emphasizes acquisitions to follow due process of law so as to capture this principle, although he also asserts that these terms are not at all defined in the statutes which intend to promote them. The question of fairness has also been associated with geographic and legal data.³² According to this author, wrong geographic or legal data amounts to unfairness in assessing compensation. That, assessors may wrongly define the size or location of the parcel and/or list the wrong person as the holder of the land right. As it would be seen later in my study, wrong plot/farm sizes are sometimes a source of objections in land acquisition projects. The author also links the issue of fairness with the methods used to assess compensation amounts. He advocates the use of replacement cost as a basis for valuing as opposed to fair market value which is usually dictated by most national statutes. He borrows the idea of using replacement cost from World Bank's resettlement policy

³¹ 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.

³² Lindsay, J. M. *Compulsory Acquisition of Land and Compensation in Infrastructure Projects*. PPP Insights, 2012, Vol.1, No.3, Pg.1-10.

which is usually followed in expropriations done for implementation of World Bank funded projects.³³ The author is of the view that, where markets for land are weak, cash compensation based on fair market value may be insufficient to compensate for the disturbance to livelihoods and social cohesion caused by the acquisitions.³⁴

Furthermore, **Komu F.** provides detailed statistics on compensation objections and that these objections revolved around fairness, adequacy and promptness of compensation.³⁵ According to him, there was a steady rise in number of cases concerning compensation in Tanzania from 2011 to 2014 (11,256 to 35,000). These statistics tallies with those from budget speeches of the ministry responsible for lands which indicate that cases have been on the increase and most of the cases were lodged in major cities of Mwanza (20.7%), Dar es Salaam 19%), and Morogoro (10.5%). Apart from inadequacy of compensation amount, the process of land acquisition takes excessively long time out of planned time limiting PAPs from proceeding with their livelihoods and development undertakings.³⁶ This leaves PAPs in dilemma and it stagnates property development including planting crops for subsistence and building essential structures between the issuing of the notice for the intention to compulsorily acquire land and the actual compensation payment.³⁷ Restrictions imposed by the notice of intended land acquisition are grossly unjust since

³³ World Bank Operational Policy 4.12 – Involuntary Resettlement, Paragraph 6(iii)

³⁴ Ibid

³⁵ 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.

³⁶ Ngombale, M. V., *Socio-Economic Implication of Delayed Land Acquisition Projects on Project Affected Persons*, MSc Thesis, Ardhi University, 2020, Dar es Salaam, Tanzania

³⁷ Kongela, S., *The Impact of Peripheral Urban Land Acquisition on Indigenous Communities' Livelihoods and Environment Around Uluguru Mountains, Morogoro*. Dar es Salaam, 2008.

these improvements and developments are often done out of necessity. Crops are grown to feed the families or earn a living and additional structures may be required when families or businesses grow.³⁸ However, **Komu's** treatise on land acquisition and compensation is general, focusing on objections and their causes with no particular focus on the nature of the acquisitions.

Mpwehuka G., asserts that, despite of having laws which shows the procedures and emphasis on full fair and prompt compensation yet the affected persons in compulsory purchase do still raise complaints, which lead to objections. The author addresses the reasons for objection in which people are not satisfied with the whole process of calculating the amount to be paid as compensation. He explains more that objections lead to delay in paying compensation, which also has some consequences, including increase in the cost of the project whereby much more sum should be paid as compensation as per the legal provisions following the delay.³⁹ The question of objections in land acquisitions and compensation and delays of the project featured in some of the projects in Tanzania, and some of these acquisitions had elements of partial acquisitions. Therefore, Mpwehuka's work covers objections and delays in general terms whereby this study with focus on partial property acquisitions.

³⁸Kombe, W., Land Acquisition for Public Use: Emerging Conflicts and their Sicio-Political Implications. *Crisis States Research Centre*, 2010

³⁹ Mpwehuka G., Objections in Compulsory Land Acquisitions in Tanzania. Unpublished MSc. Thesis, Ardhi University, Tanzania, 2015.

Kironde L., talks about Project Affected Person's dissatisfaction on land acquisitions and compensation including those whose property were partially acquired.⁴⁰ He argues that, there is a general dissatisfaction with the manner land acquisition is usually done including assessment of values, amounts arrived at, and the actual payment of compensation. The author picks the land acquisition exercise in Kurasini ward, Dar es salaam as an example, most of the affected persons criticized the valuation procedure that required the affected people to fill a form that required them to state the amount they would like to be paid as compensation but they were given a different amount. The project affected persons were of the view that that their properties were undervalued and what had been assessed was not disclosed to them until the day they were supposed to take cheques for compensation. Another complaint was that, they were not permitted to question the compensation amount they were paid regardless of the fact that compensation was not paid within six months as provided by law and interest which ought to be charged on delayed compensation was not paid for the delayed period. Some of the project affected persons went to court to contest the land acquisition process but their houses were demolished before their cases were determined by the court. There were some people who questioned whether the taking of their lands was for public interest since the land was allocated to private person after the existing buildings had been demolished by the government. A few Project Affected Persons refused to accept compensation. In short, the findings of Kironde identified so

⁴⁰Kironde L., *Improving Land Sector Governance in Africa: The Case of Tanzania*, Ardhi University, Dar es salaam, Tanzania, 2009.

many problems associated with compulsory land acquisition.⁴¹ In other instances, in the past, acquisitions had been contested and proved not to have been done for public purpose and compensation paid was inadequate, for example in *The Attorney General Versus Sisi Enterprises Ltd.*⁴² Kironde's is a detailed treatise of land acquisition and compensation projects, with some instances of partial property acquisitions. However, his work did not explore legislation to identify gaps inherent in the legislation, which is the focus of my work.

1.5 Research Gap

From the literature above it can be deduced that there are many challenges as far as compulsory land acquisition is concerned and partial acquisition contributes to these challenges. The challenges covered in other literatures are key albeit general. Issues discussed include dissatisfaction of compensation assessment and payment processes, major reasons for objections in compulsory acquisition exercises, adherence to principles of compensation, and partial property acquisitions and their resulting problems together with the remedies available. Principles of compensation explored include the principle of equivalence, payment of fair full and prompt compensation, and acquisition for public interests. All the matters are closely linked with the current study in different ways. Partial property acquisitions lead various challenges and do not adhere to compensation

⁴¹Ibid

⁴²Civil Case No.47 of 2001. Also, in *Ellis v Home Office* (1958) 2 QB 135; *Attorney General v Kang'wina Matinde & 228 others* [Misc. Land Application 3 of 2022] [2022] TZHC 836; *Agro Industries Ltd v Attorney General* 1994 TLR 43; *B.P. Bhatt and Another v Habib Rajani* 1953 EA 536. Etc. References were also made in *Stroud's Judicial Dictionary*, 5th Edn, Vol 4 & *Black's Law Dictionary*, 7th edn by Bryan A. Garner.

principles almost always. On top of that, the land acquisition legislation in Tanzania, is not detailed enough to enable fairness and adequacy as far as partial land acquisition is concerned. It is the intention of this study to explore in detail challenges specifically legal ones, arising out of partial property acquisitions. Matters discussed in the above selected literatures are examined with reference to partial property acquisitions and legal challenges thereof.

1.6 Objectives of the research

1.6.1 Main Objective

To explore the existing legal gaps on the laws governing partial property acquisition and compensation so as to devise measures to address the said gaps.

1.6.2 Specific Objectives

- i) To examine the existing legal gaps on the laws governing partial property acquisition and compensation.
- ii) To examine whether the current regulatory framework guarantees fair and adequate compensation for partially acquired properties.

1.7 Research Questions

- i) What are the existing legal gaps on the laws governing partial property acquisition and compensation?

- ii) To what extent the current regulatory framework guarantees fair and adequate compensation for partially acquired properties?
- iii) What are possible remedies that can be employed to address challenges related to partial property acquisition and compensation?

1.8 Significance of the Research

The finding of research will be useful in many ways. One of the areas in which the study will contribute to, is acquisition of land using compulsory powers of the government. In acquiring land, the government observes due process of law. This study is about legal gaps in land acquisition legislation, it will therefore highlight the mishaps in the land acquisition law which causes problems in the processes especially those connected with unattainment of fair and full compensation.

The study will also be useful in urban infrastructure upgrading especially during the planning phase in order to minimize challenges facing acquiring authorities during the compensation phase because problems of partial acquisition will be explored in detail here. Sometimes there are delays in implementing projects because of objections lodged against compensation on account of being unfair and partial. Delays in implementation of projects have economic implications, especially those related with increased costs. Identification of gaps in land acquisition law and recommendations provided thereof will help to reduce objections and therefore make timely implementation of the projects possible.

Also the study is of significant importance in the academic realm as it opens up another line of thinking regarding compulsory land acquisition and compensation for urban infrastructure projects. Much of the researches on compulsory land acquisition are general focusing on broader issues. This particular study focuses on partial property acquisition, an area that has received very limited attention. As a result, issues of severance and injurious affection are almost always seen as trivial and therefore sidelined. The study will therefore incite thinking on practical matters related with partial property acquisition, especially the questions of severance and injurious affection vis-à-vis fairness and fullness of awarded compensation.

1.9 Research Methodology

McConville & Chui identifies three types of legal research, thus; Doctrinal Research, Non-Doctrinal Research, and International and Comparative Legal Research.⁴³ The authors are of the view 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. This view is also shared by Banakar & Travers and Dobinson & Johns.⁴⁴ Within the non-doctrinal legal research there are several methodologies including the empirical legal scholarship that is combined with doctrinal methodology to answer objectives of this research. It is important to note that

⁴³McConville, M., & Chui, W. H. *Research Methods for Law*. Edinburgh University Press Ltd, Edinburgh, 2007.

⁴⁴ Dobinson, I. & Johns, F., *Qualitative Legal Research*. In McConville B. M. & Chui W. H. *Research Methods for Law*. Edinburgh, United Kingdom: Edinburgh University Press, Pg.16-45, 2007.

empirical legal scholarship is complementary to doctrinal research and both methodologies can be used simultaneously to examine a legal issue.⁴⁵

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. Reason for adopting a mixed approach to this research is the complexity of the phenomena at hand, i.e., examining legal gaps.⁴⁶ The doctrinal approach is used to identify and discuss the said gaps in the legislation based on its own merit (the legislation), while the empirical legal scholarship approach is meant to identify gaps in the legislation based on observed problems during the application of the legislation in the implementation of the projects, in this case, compulsory land acquisition. The idea of combining research approaches is supported by several authors such as Duncan & Hutchinson; Ngoke, Mbanjo, & Helynn, and others.⁴⁷ Below is a detailed explanation of the methodologies adopted in this research.

⁴⁵ McConville, B M. & Chui, W. H., *Research Methods for Law*. Edinburg University Press, Edinburg. (Pg.6)

⁴⁶Ibid

⁴⁷ Duncan, N. J.& Hutchinson, T. *Defining and Describing What We Do: Doctrinal Legal Research*. Deakin Law Review, 2012, Vol.17, No.1, Pg. 83-119; Ngoke, R. A., Mbanjo, I. P., & Helynn, O. *A Critical Appraisal of Doctrinal and Non-Doctrinal Legal Research Methodologies in Contemporary Times*. International Journal of Civil Law and Legal Research, 2023, Vol.3, No.1, Pg.8-17.

1.9.1 Doctrinal Methodology

As it has been pointed out above, the study begins with a doctrinal or black letter law methodology. This is based on analyzing legal rules for partial property acquisition and their logical connections or disjunctions through an examination of the the wording and interpretation of the provisions of the land acquisition legislation, as well as existing literature on compulsory land acquisition, partial property acquisition (which is invariably compulsory), severance and injurious effects. This enabled us to critically analyze the meanings and implications of these rules and the principles which underpin them.

1.9.1.1 Data Collection

The source of data under this methodology 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. Salient features of the land acquisition legislation were explored in order to come up with the variables that have been critically examined.

1.9.1.2 Data analysis and Presentation

Data analysis is defined as the process of applying (systematically) statistical and logical techniques to describe and illustrate, condense and recap, and evaluate data. It includes inspecting, cleaning, transforming and modelling data aiming at obtaining useful

information, suggesting conclusions and supporting decision making.⁴⁸ Primary data was interpreted by different canons of statutory interpretation, namely plain meaning rules, mischief and golden rule, and techniques of legal reasoning. Inductive reasoning was used to directly address the fundamental rules, deductive reasoning was used to analyse previous knowledge while analogy in analyzing case laws.⁴⁹ The study focused on a review and analysis of the legal texts, including cases relevant to the research area, i.e. partial property acquisition. The aim of such analysis is not to generalize, but to understand and interpret the meanings, reasons, motives and intentions that underlie the land acquisition legislation as well as institutional framework governing compulsory land acquisition. Generally, process involved examining the constitution, various national laws (both principal and subsidiary legislation), policies, and guidelines. Secondary sources were analysed by content analysis. Data was presented in the form of text, tables and figures.

1.9.2 Empirical Legal Scholarship

In this particular study, the author wants to look into, among other things, how the law affects society by examining how the existing law guarantees adequate and fair compensation when properties are partially acquired during compulsory purchase. This warranted the use of empirical legal scholarship in the research, which borrows methods

⁴⁸Kothari, C.R., *Research Methodology: Methods and Techniques*. 2nd Edition, New Age International Publishers, New Delhi, 2004.

⁴⁹*Ibid* n.66.

used in other disciplines such as sociology, political science, economics, psychology, history and feminism as aids to legal research. The methods borrowed from other disciplines in order to generate empirical data to answer the questions are related with selection of sample sizes, collection of data, and analysis of data.⁵⁰ These methods are explained in detail in various legal research literature such as Schrama.⁵¹

1.9.2.1 Justification for Selection of the Case Study Strategy

This being a qualitative study, it uses case study strategy because, for this case, it is the most suitable of all strategies used under qualitative research because we seek to understand a social phenomenon. Qualitative approach is considered appropriate for situations like this where the researcher requires understanding of the processes, events and relationships in the context of social and cultural setting and where the aim of the study is to explore an understanding of the process by the small or under researched population and not to test hypothesis.⁵² Case study is used for researching about a complex social phenomena which is either new or has not been exhaustively explored.⁵³ What prompted this study is the proliferation of complaints regarding unfair compensation practices for Tanzanian land acquisition exercises, especially when only portions of properties are acquired. The complaints in question concern non consideration of

⁵⁰Abugu 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.

⁵¹Schrama, W., *How to Carry Out Interdisciplinary Legal Research: Some Experiences with an Interdisciplinary Research Method*. Utrecht Law Review, Vol.7, No.147, Pg.427-433, 2011.

⁵²McCombes S., An introduction to samplings methods,*Sampling*, 2020.

⁵³ Martyn Denscombe, *The Good Research Guide: For Small-scale Social Research Projects* Open University Press, 2007

severance and injurious affection. Recent land acquisition exercises formed the basis of the conclusion regarding proliferation of complaints especially those done by the government for implementing infrastructure upgrading projects, for example, the Dar es Salaam Metropolitan Development Project. The same is also proven by recent researches on land acquisition exercises such as Makupa & Alananga.⁵⁴ Since this is a social phenomenon which can arise when there are gaps in the law or misinterpretation and/or poor enforcement of law, case study strategy was employed.

1.9.2.2 Sampling and Sample Size

Sampling refers to the way of picking proportion of the population from which certain aspect is studied and the sample is a group of individuals who will actually participate in research. The number chosen should neither be too small nor excessively large; it should be optimal enough to fulfill the requirement and efficiency.⁵⁵ This study drew its sample size from aforementioned projects and it included Project Affected Persons, local leaders, programme implementing officers, valuers from the respective local government authorities and the Ministry of Lands Housing and Human Settlements Development. Non-probability (purposive) sampling technique was adopted on selection of key informants to this study. In purposive sampling, items for the sample are selected

⁵⁴Makupa E.R. & Alananga S., *Compulsory Land Acquisition and Good Governance: An Assessment of the Luguruni Satellite Town Project in Dar es Salaam Tanzania*. African Journal of Land Policy and Geospatial Sciences. No.2, 2018.

⁵⁵Abugu 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.

deliberately by the researcher, his/her choice concerning the items remains supreme.⁵⁶ It involves the use of judgment to select cases to answer certain research questions. This technique was adopted in this study since it enabled researchers to choose representatives that are more informative. Key informants who were selected using this technique included projects implementing officers, land officers/valuers, and local leaders.

For the property owners, simple random sampling method was used to select the sample. A full list of properties in the corridor to be affected by project was obtained from the local government office of Kilakala ward and 42 property owners were picked randomly. The same technique was used pick other 38 respondents from the Mnazibay - Dar es Salaam Gas Pipeline project particularly at Ufukoni ward. As a rule of thumb, the size chosen should neither be too small nor excessively large. It should be just optimal enough.⁵⁷ A sample size that is optimal has to fulfil the requirements of reliability, representativeness and efficiency. The tentative sample size was set based on best practice in social sciences which is 10% of the sampling frame. In this study, the actual sample size was decided based on the principle of saturation, i.e., when adding more participants to the study does not result in additional information.⁵⁸ Selection of the study areas is justified on the grounds of availability of a large number of PAPs whose properties were partially affected and these PAPs had objected on compensation assessed for reasons of

⁵⁶Kothari, C.R., Research Methodology: Methods and Techniques, 2nd Edition, New Age International Publishers, New Delhi, 2004.

⁵⁷Benard H., Research Methods in Antrolopogy: Qualitative and Quantitave Approaches, 2002.

⁵⁸Ibid

being unfair or inadequate. Of all villages, Ufukoni ward and Kilakala ward qualified most on this particular parameter.

As it has been pointed out in the foregoing paragraph, our sample size is 86. This includes 42 property owners who were selected from a sampling frame of 419 whose properties which were affected by the DMDP in Kilakala ward and 38 property owners who were selected from a sampling frame of 378 properties which were affected by the Mnazibay - Dar es Salaam Gas pipeline in Ufukoni ward. Therefore the minimum sample size from the affected community is 80 individual property owners. Other key informants forming the sample size are 6 officials as identified in Table 1 below. For the informant to qualify, one must have been identified by the Project as a person who owned land legally within the project area to ensure that first-hand information is obtained for findings that are more reliable.

Table 1.1: The table summarizes the sample size

Designation of Informant	Number of Sample size
Dar es Salaam Metropolitan Development Project officers	1
Local Leaders (1 from each ward)	2
Temeke Municipal Council officials	1
Mtwara Municipal Council officials	1
Valuers from Ardhi University	1
Property Owners - Kilakala Ward (Temeke Dar es salaam)	42
Property Owners - Ufukoni Ward (Mtwara Municipality)	38
Total	86

Source: Author's Own Construct, 2021

1.9.2.3 Data Collection

Primary data formed an important and empirical part of this study. The primary data are those which are collected afresh and for the first time, and thus happen to be original in character. It is the information which is collected from respondents while adhering strictly to research ethics and principles.⁵⁹ 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. The empirical data from the study areas was collected by the researcher himself. Face to face interviews with property owners in the identified areas were conducted. Interview guides were prepared and administered by the researcher physically to respondents from the study areas. Direct contact between the interviewee and interviewer has the advantage of improving responsiveness as compared to other methods of data collection such as questionnaires.⁶⁰ Interview questions revolved around the salient features of the land acquisition legislation which were also the main variables of the study. These include preparation of the land acquisition exercise including awareness creation to the community regarding the acquisition and the project as well as rights and obligations of the parties involved, notice of intended acquisition of land to the potential victims, bases and methods for assessing compensation amount, severance and other injurious effects, treatment of third-party interests such as leases, and lastly the question of fairness.

⁵⁹Saunders, M. L. (2009). An overview of research methodology in information system. *Open Access Library Journals*.

⁶⁰ Benard H., *Research Methods in Anthropology: Qualitative and Quantitative Approaches*, 2002

Each interview took approximately 10 minutes at the respondent's residence or their place of work based on their choice. These local leaders identified and located the respondents from the randomly generated sampling list one day before the day of the interview. The local leader asked respondents to sign consent forms and proposed time for interview. Most of the respondents were available before noon. 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.

As it has been pointed out in the preceding sections, this is a partly doctrinal and partly empirical legal research. It therefore combines techniques used in both types of researches. Therefore, the primary data are two-fold. One, those deduced from the land acquisition legislation, i.e. the constitution, selected Acts of parliament and regulations; two, those collected from the study areas.⁶¹ Primary data from the study areas are the responses from actors of the Dar es Salaam Metropolitan Development Project and Mnazibay – Dar es Salaam Gas Pipeline project. They include officers, Project Affected Persons under the compulsory land acquisition project and the local leaders of the selected wards (Which are Kilakala in Temeke Dar es Salaam and Ufukoni in Mtwara municipality). Selection of the study areas is justified on the grounds that the projects are relatively recent as far as partial property acquisition is concerned. Another reason is that most project affected

⁶¹ Mentioned under sections 3.1.3 to 3.1.6 of Chapter Three of this work

persons in these projects whose remaining land seemed undesirable to them, required the acquiring authorities to acquire whole properties, a request which was declined. Regarding secondary data, relevant documents were consulted. These included papers, valuation manuals and guidelines, minutes from meetings and directives from authorities.⁶²

1.9.2.4 Data Analysis and Presentation

Empirical data was analyzed using thematic analysis. Thematic analysis entails closely examining the data to identify the common themes, i.e., the topics, ideas and the relationship.⁶³ Again, themes emanating from the analysis, tallied well with the variables of the study. Empirical data were important in answering the research questions because the data reflected the situation on the ground, the gaps so identified in the legislation. As explained by Dawson, this type of analysis (Thematic) 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.⁶⁴ Background reading can form part of the analysis process, especially if it can help to explain an emerging theme.

To be able to do this, data obtained through interviews are analysed through three consecutive stages; namely descriptive coding which involved reading through qualitative

⁶²Ibid.

⁶³Caulfield, J. How to Do Thematic Analysis, 2019. <https://www.scribbr.com/methodology/thematic-analysis/>. Accessed 16th May 2023.

⁶⁴Dawson, C., Introduction to Research Methods: A Practical Guide for Anyone Undertaking a Research Project (4th ed.). How to Books, Oxford, 2009.

data and coding passages according to the topic. Interpretive coding which involves identifying or highlighting anything recorded that might help in understanding the participants experiences, views, and perceptions as they relate to the topic under examination, and to write a brief comment stating what is of interest and finally overarching themes which involved using preliminary comments to define descriptive codes, applying and redefining codes so as to identify, organize and report the themes which answered the objectives of the study.⁶⁵

The study also involves descriptive and statistical analysis for interview guide questions. The data collected from the field is then organized, compulsory land classified and tabulated. This technique helps to break down and select the important data or information that relates to the study. Data from the field is presented in various methods like text, tables, figures, photographs and charts.

1.10 Scope of the Study

This research is limited to compulsory land acquisition for urban infrastructure projects in urban area where Project Affected Persons have already been paid compensation. The study was conducted in unplanned settlements where land acquisition for infrastructure upgrading projects have been implemented in Kilakala ward Temeke Municipality and gas pipeline project which affected among others, Ufukoni ward residents in Mtwara

⁶⁵King, N., Horrocks, C. & Brooks J. Interviews in Qualitative Research 2nd ed, Sage, London, 2019.

municipality. Conceptually, the study focuses on examining land acquisition and compensation for urban infrastructure projects in unplanned settlements. Physically, the study is limited to Kilakala ward in Temeke Municipality, Dar es Salaam city and Ufukoni ward in Mtwara Municipality Mtwara Region.

1.11 Limitation of the Study

The limitations included existence of very few sources to which we can refer as far as partial acquisitions of land subject is concerned, i.e., literature on partial property acquisition is vary scant. Another limitation is related to unavailability of the selected respondents who were earmarked for interviews. Some agreed to come but refused to be interviewed upon discovering that the interview was for learning purposes only while they expected to be paid for the interviews. However, the limitation on scarcity of reference materials was overcome by utilizing foreign literatures albeit old. Internet sources, especially institutional websites proved to be greatly useful. The limitation on unavailability of some respondents was overcome by seeking information from those available and triangulation. Where possible, information was obtained from local leaders and crosschecked with available documents and other PAPs.

1.12 Ethical Considerations

All research projects should rigorously follow ethical considerations.⁶⁶ Ethical issues were

⁶⁶ Dooly, M., Moore, E., & Vallejo, C. Research ethics. In E. Moore & M. Dooly (Eds), *Qualitative approaches to research on plurilingual education*, 2017, pp. 351-362.

considered at all stages of the research process especially in relation with informed consent, confidentiality, data collection, data storage, data presentation. Consent was sought from the respondents well before the interview session. In this light, consent forms, containing the introduction to the research and interviewee rights, was designed and given to the respondents to read before interview sessions. The major challenge I foresaw in my study was how not to frame the interviews so that interviewees don't convert our relationship therapeutic, a common situation when you do interview with people with a lot of grievances about the phenomena you are investigating, in this case, land acquisition. In a situation like this, normally respondents give even information which later they regret why they actually gave it to the researcher.⁶⁷ Again, to conform to ethics in research, data collected for this research was treated with strict confidentiality. Where possible, anonymity of the respondents was highly maintained. Interview responses were recorded in a notebook which were properly stored to ensure security. Information so collected was never shared to any third parties it be researchers or otherwise. Plagiarism and falsification were avoided at all costs through acknowledging all sources of information including adverbium quotes. Identities of respondents have been made confidential through avoidance of mentioning names throughout the work. Where naming was necessary, we resorted to the use of pseudonyms.

⁶⁷ Taquette S.R. & Souza L.M., Ethical Dilemmas in Qualitative Research: A Critical Literature Review, International Journal of Qualitative Methods, 2022, Vol. 21 pp. 1-15

1.13 Conclusion

Partial property acquisitions are common phenomena in provision or improvement of lateral infrastructure. Tanzanian land acquisition legislation provides for expropriation in general with no specific focus on partial property acquisitions, a fact which leads to challenges in implementation of the said legislation. As such, land acquisition exercises for infrastructure development or improvement are constantly objected to for the reasons of being inadequate and unfair. Due to the generality of the legislation, there are gaps which make it difficult to implement. This study seeks to examine the gaps in the said land acquisition legislation with adequacy and fairness in mind and recommend possible solutions.

CHAPTER TWO

CONCEPTS AND THEORIES ON PARTIAL PROPERTY ACQUISITIONS AND COMPENSATION

2.1 Introduction

This chapter covers the theoretical framework on compulsory land acquisition and compensation. It is imperative to give an account of the theoretical framework in order to tell the readers which concepts and theories inform this work and what are their meaning. 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 values, cost, and replacement cost are explained. Theories discussed include the doctrine of severance, the doctrine of offsets, and property and property rights theories.

2.2 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.⁶⁸ 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

⁶⁸Lusht M., Real Estate Valuation: Principles and Applications, KML Publishing, New York, 1997

of methods, inputs and assumptions, and the ultimate opinion of value.⁶⁹ Examples of bases of value are: market value, market rent, equitable value, investment value/worth, synergistic value, liquidation value, fair value, fair market value, premise of value/assumed use, premise of value – highest and best use, premise of value – forced sale, and several others.⁷⁰ From these, two broad categories of bases of value are identified, thus; market value and non-market value.⁷¹ 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 Land Act advocates for full, fair and prompt compensation based on the market value of the property.⁷² The same is reiterated in the the Valuation Regulations which states that:

“The basis for assessment of any land and unexhausted improvements for purposes of compensation under the Act shall be the market value of such land and unexhausted improvements”⁷³

Regulation 10 of the same subsidiary legislation emphasizes this by specifying the method to be used when assessing compensation payable, whereby comparative method is identified as a proper method for the task. The regulation states that:

“The market value of any land and unexhausted improvement shall be arrived at by use of comparative method with evidence from actual recent sales of similar properties or by use of the income approach or replacement cost method where the property is of special nature and not saleable”⁷⁴

⁶⁹International Valuation Standards Council, International Valuation Standards, London, 2022

⁷⁰Ibid

⁷¹Ibid, IVS 1

⁷²Land Act No.4 RE 2019, S.3

⁷³ Ibid, Regulation 9

⁷⁴Ibid, R.10

The selection of the basis and method of valuation may 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 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.

2.3 Property

Property is any item that a person or a business has legal title over. Property can be tangible items, such as houses, cars, or appliances, or it can refer to intangible items that carry the promise of future worth, such as stock and bond certificates.⁷⁵ The term property can also refer to the legal rights and interests that individuals or entities have over tangible or intangible assets. The types of property are: Real Property which means land and anything permanently attached to it, like buildings. Ownership usually involves rights to use, sell, or lease the land; Personal Property which include movable items that are not fixed to land, such as vehicles, furniture, and electronics. This can be further divided into tangible (physical objects) and intangible (rights, patents, trademarks); Intellectual Property which include creations of the mind, including inventions, literary and artistic

⁷⁵Millington, A.F., An Introduction to Property Valuation, 5th edn., 2000, Estates Gazette, London.

works, and symbols.⁷⁶ This type of property is protected by law through patents, copyrights, and trademarks. Property rights can vary significantly across different legal systems and cultures, influencing social relations, economic activities, and individual freedoms. They are often tied to concepts of ownership, control, and the ability to transfer property.

2.4 Market Value

According to the International Valuation Standards, 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 and the Valuation and Valuers Registration Act.⁷⁷ 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 that was sold under open market conditions with the one

⁷⁶ Lusht M.K. Real estate Valuation: Principles and Applications, KML, Georgia, 2001.

⁷⁷ The National Land Policy 1995 and Valuation and Valuers Registration Act, 2016

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.

2.5 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.⁷⁸ 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.⁷⁹ 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.⁸⁰ 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.

⁷⁸The Law Reform Commission of Ireland, *Compulsory Acquisition of Land*, 2017, Dublin

⁷⁹Shumsky M., *Conveyancing*, <https://www.stacklaw.com.au/news/conveyancing/what-is-partial-compulsory-acquisition/>. Accessed on 17th May 2023

⁸⁰Bell 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

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.

2.6 Theories on Property and Property Rights

A number of theories inform this study. They include the natural law of property, utilitarian theory of property, social utility theory of property and personhood theory of property. Property rights theories provide a multidisciplinary framework for investigating complex issues related to resource allocation, economic behavior, legal frameworks, social dynamics, technological innovation, and global development. Theories selected in

this study are essential tools for understanding the mechanisms through which property rights shape individual behavior, institutional arrangements, and societal outcomes in diverse contexts. Since this research is about compulsory acquisition of land, it is important to explain property rights theories because individuals' property rights are directly affected by the land acquisition exercise. Let us consider the identified property right theories in turn.

2.6.1 Natural Law of Property

The natural law of property is a concept derived from natural law theory, which suggests that certain rights and principles regarding property ownership are inherent and fundamental to human nature. According to this perspective, individuals have a natural right to acquire, possess, use, and dispose of property.⁸¹ The natural law of property posits that these rights exist independent of any governmental or legal systems. It argues that individuals have the right to own property as an extension of their inherent human rights, such as the right to life, liberty, and the pursuit of happiness. In this view, property rights are seen as essential for the protection of individual autonomy and the fulfillment of basic human needs.

⁸¹Joseph C. Hutcheson, Natural Law and the Right to Property. Viewed on <https://www3.nd.edu/~pweithma/My%20Papers/Natural%20Law,%20Property%20and%20Redistribution.pdf> & Weithman P.J., Natural Law, Property, and Redistribution. *The Journal of Religious Ethics*, 1993, Vol. 21, No.1 pp. 165-180

The concept of the natural law of property has been influential in the development of legal and political philosophies throughout history. It has been used to justify various property regimes, including private property ownership, communal property, and even arguments for land reform or redistribution. However, it is important to note that interpretations and applications of the natural law of property can vary among different scholars and philosophical traditions. Some emphasize the importance of private property rights as a means to ensure individual freedom and economic efficiency, while others advocate for more communal or egalitarian approaches to property ownership. Overall, the natural law of property seeks to establish a moral and philosophical foundation for property rights, grounded in the belief that these rights are inherent to human nature and should be protected and respected. In relation to the current study, it is worthwhile to examine how property rights are protected and respected in partial property acquisitions.

2.6.2 Utilitarian Theory of Property

The utilitarian theory of property is a concept rooted in the philosophy of utilitarianism, which is a moral theory that suggests actions should be judged based on their ability to produce the greatest amount of overall happiness or well-being for the greatest number of people. In the context of property, utilitarianism examines the distribution and use of resources to maximize overall societal welfare.⁸²

⁸²Alexander, G., & Penalver, E., *An Introduction to Property Theory*, Cambridge University Press, Cambridge, 2012

According to utilitarian theory, property rights are not considered inherent or absolute but are instead justified and regulated by their potential to promote the greater good. Property is seen as a social institution that should be organized and structured in a way that maximizes overall utility or happiness. The concept of eminent domain, the subject matter of this study is also rooted in this theory and the author seeks to explore whether or not, partial property acquisition guarantees improved societal welfare.

2.6.3 Social Utility Theory of Property

The social utility theory of property is a perspective within political and legal theory that suggests property rights should be justified and evaluated based on their overall social utility or benefit. It seeks to balance the interests of individual property owners with the collective welfare of society as a whole. According to this theory, property rights are not seen as absolute or inherent but rather as socially constructed and contingent upon their usefulness or value to society.⁸³ The primary goal is to promote the greatest overall social welfare and maximize societal benefits.

Proponents of the social utility theory argue that property rights should be subject to limitations and regulations in cases where they conflict with broader social interests. For example, zoning laws and environmental regulations are often justified under this perspective to ensure that property uses do not harm public health, safety, or the

⁸³Chandra, R., Property Rights: Principles of Legitimation, Oxford Academic, Delhi, 2012

environment. The theory emphasizes that property rights should not be seen as static and unchanging, but rather subject to revision and adaptation as societal needs and circumstances evolve. It encourages a flexible and pragmatic approach to property rights that can be adjusted to address changing social priorities and challenges. Overall, the social utility theory of property seeks to strike a balance between the rights and interests of individual property owners and the well-being of society as a whole, promoting a perspective that considers the broader social implications of property ownership and use. In using powers of eminent domain, state takes the veto power of the property owners so that they cannot block implementation of the projects which are aimed at improving the lives of the society as a whole. The extent to which compulsory land acquisitions in Tanzania conform to this particular theory needs to be explored.

2.6.4 Personhood Theory of Property

The personhood theory of property is a philosophical perspective that argues for a connection between personal identity and the ownership of property. The theory is based on Immanuel Kant and John Locke writings. According to this theory, an individual's personal identity is intimately tied to their ability to own and control property. It suggests that property ownership is not just a legal or economic concept, but also a fundamental aspect of human identity and autonomy.⁸⁴ The personhood theory of property emphasizes the idea that ownership of property is essential for individuals to express their personal

⁸⁴Radin M.J., Property and Personhood, Stanford Law Review, 1982, Vol. 34 No.5, pp. 957-1015

values, pursue their interests, and exercise their autonomy. It views property as an extension of oneself, reflecting one's labor, efforts, and individuality. Property ownership, therefore, plays a crucial role in shaping and defining a person's identity.

Proponents of the personhood theory argue that property ownership enables individuals to exert control over their lives and create a sense of stability and security. It allows them to exercise their freedom, make choices, and shape their environment according to their desires and needs. From this perspective, the right to own property is seen as a natural and inherent aspect of being human. Critics of the personhood theory of property, on the other hand, may argue that it places too much emphasis on individual ownership and neglects broader social and collective interests. They may argue that property ownership should be seen as a social construct rather than an inherent aspect of personal identity. They may also emphasize the importance of balancing individual property rights with the needs of society as a whole. It is worth noting that the personhood theory of property is one of several theories and perspectives on property ownership. Other theories include the labor theory of property, the utilitarian theory, and the bundle of rights theory, among others. Each theory offers a different perspective on the nature, purpose, and justifications for property ownership.

2.7 Conclusion

The chapter presented various concepts used in compulsory land acquisition legislation and which have a bearing on the technical challenges of assessing the compensation

amounts, as well as theories which informs this study. Key concepts covered include basis of valuation and market value. The basis of valuation for compensation as provided by the stated legislation is the market value, which means that the Market Sales approach would be the appropriate method for assessing compensation payable. This is a problem in itself because properties are sold as a whole, not in small bits. It would be very challenging to establish the market value of small portion of the property. The chapter also discusses the doctrine of severance and theories on property rights. The Tanzanian land acquisition law abides to the doctrine of severance albeit partially, because severance and injurious affection are treated very shallowly therefore leaving gaps. There are only two sections that provide for severance and injurious affection without any regulations which would have addressed the issue in detail. The relationship between people and property rights are explored in the discussion of theories on property rights. As it happens, compulsory land acquisition interferes with individuals and collective property rights. The next chapter dwells on discussion the legal framework governing compulsory land acquisition, procedure for land acquisition and compensation, and stakeholders involved in compulsory land acquisition and compensation in Tanzania. All four theories has a bearing on the subject matter of this research. They are all on property rights both individual and communal, infringement of the rights, justification for condemnation, and fair and adequate compensation. Therefore, the synthesis in this work relates to all theories discussed in the sections above.

CHAPTER THREE
LEGAL AND INSTITUTIONAL FRAMEWORK ON COMPULSORY LAND
ACQUISITIONS AND COMPENSATION

3.1 Introduction

This chapter dwells on discussion the legal framework governing compulsory land acquisition, procedure for land acquisition and compensation, and stakeholders involved in compulsory land acquisition and compensation in Tanzania. It forms an important work of this research as the focus of the study is on exploring legal challenges of acquiring and compensating the partially acquired properties. The chapter therefore, gives a short description of each of the statutes that provides for compulsory land acquisition and well as procedures involved. Identification of the stakeholders involved is also important as they form a crucial part of the institutions involved in the process, for example, the ward executive office and officers, ministry responsible for lands, as well as projects and project implementers.

3.2 Legal Framework Governing Compulsory Land Acquisition in Tanzania

The constitution of the united republic of Tanzania requires land acquisitions to follow the due process of law. As such, responsible organs formulate and enact laws to govern compulsory land acquisition. These laws empower authorities to carry out identified activities which ought to be legalized and gives victims of compulsory acquisition awareness on what to do when things go wrong, otherwise would be unlawful and possibly

be restrained by the courts (Ndjovu, 2016). Below is a brief discussion of various laws, polices and regulations which govern compulsory land acquisition and compensation in Tanzania.

3.1.1 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.

3.1.2 The National Land Policy

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 policy statement under the National Land Policy requires payment of compensation for the land acquired for public interest will be 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. It is from this policy where the compensation package come from and the right to compensation was not only on the property market value rather other costs like disturbance, delayed compensation, accommodation is taken in consideration. These principles provide the basis for provisions on compensation in the Land Act⁸⁵ and Village Land Act.⁸⁶

3.1.3 The Land Acquisition Act

This is Act was enacted to replace the Land Acquisition Ordinance. It 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 it shall not be less than six weeks from the date of publication of the notice in the gazette. However, president can reduce

⁸⁵ Land Act, Cap 113, No.4, RE 2019

⁸⁶ Village Land Act, Cap 113, No.5, RE 2019

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 on 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 as explained under paragraph 1.2 of this work.

3.1.4 The Land Act

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 shall prevail.⁸⁷ Both the Land Act 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.

⁸⁷Land Act, Cap 113, No.4, RE 2019

Compensation under Section 156 of the Land Act No. 4 of 1999 applies for non-governmental corporate body, institutions, or group of persons. Section 156 of the Land Act 1999 requires compensation to be paid to any person for the use of land of which he / she is in lawful or actual occupation as a communal right of way and with respect to a way leave. These include any damage suffered in respect of trees, crops, and buildings as result of creation of way leave; and damage due to surveying or determining the route of that way leave. It is the responsibility of the government department/entity or corporate body that applied for right of way to pay compensation.

Also, according to Section 3(g) of the Village Land Act, provides for compensation package to include 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.⁸⁸ 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.

3.1.5 The Land (Compensation Claims) Regulations

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

⁸⁸Village Land Act, Cap 113, No.5, RE 2019

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.⁸⁹ 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 Regulations shall apply emphasize in the application or claim for compensation.⁹⁰

3.1.6 Valuation and Valuers Registration Act

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.⁹¹ 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.

3.2 Stakeholders involved in Land Acquisition and Compensation

According to Bourne & Walker stakeholders are individuals or groups who have an interest or some aspect rights or ownership in the project and contribute in the form of

⁸⁹Land Act, Cap 113, No.4, RE 2019

⁹⁰ Land (Assessment of Value for Compensation) Regulations, 2001

⁹¹Valuation and Valuers Registration Act, 2016

knowledge or support, can impacted by the project.⁹² Also stakeholder is any identifiable group or individual who can affect the achievement of an organizations objectives or who is affected by the achievement of an organization's objectives. A stakeholder may be actively involved in a projects work, affected by the projects outcome or in a position to affect the project success.

There are two types of stakeholders such as primary or contributing stakeholders whose participation is paramount required to sustain the activity being undertaken thus the program can fail to sustain when primary stakeholders does not participate fully on their roles and observe or secondary stakeholders whose compliance is required to sustain the activity being undertaken thus have influence on the project or program but not much essential for its survival.⁹³ The stakeholders can be personnel, suppliers, institutions, partners and communities among others who maintains the stake in an organization in the way that it sustains the performance of a project or program.⁹⁴ The stakeholders who are involved in the land acquisition in the study areas are: theacquiringauthority, the project affected persons, and the government (at all levels). Table 3.1 below shows typical stakeholders involved in compulsory land acquisition and their roles.

⁹²Bourne, Lynda & Walker, Derek. Visualising and Mapping Stakeholder Influence. *Management Decision*, 2005, Vol. 43. 649-660.

⁹³Max B. E. Clarkson. "A Stakeholder Framework for Analyzing and Evaluating Corporate Social Performance." *The Academy of Management Review*, Vol. 20, No. 1, 1995, pp. 92-117

⁹⁴Fassin, Y. The Stakeholder Model Refined. *J Bus Ethics* 84, 113-135 (2009)

Table 3.1: Typical stakeholders in compulsory land acquisition and their roles

Stakeholder	Role
States	Development, implementation and enforcement of policy and law, and through the administration of tenure, including through courts, registration of tenure rights, valuation, taxation and spatial planning.
Courts and government agencies	Administration of tenure to all, including those in remote locations. Providing services promptly and efficiently, and without requesting bribes for services.
Individuals and communities Civil society	Knowing about their rights and how to protect themselves against corrupt behavior from others. Working to raise awareness and assisting people to enjoy and protect their tenure rights. They can promote the participation of the public in decision-making processes.
Acquiring Authorities	Ensuring their investments do not cause people to be dispossessed of their tenure rights. When acquiring land, they should ensure that all relevant people are informed and engaged in the negotiations.
Tenure professionals (e.g. surveyors, lawyers, notaries, valuers, spatial planners)	Following standards of conduct for ethical behavior, including for the honest and proper performance of their duties.
Academics (Universities)	Including the governance of tenure in their courses, and can strengthen collaboration between one another with regard to teaching and research.

Source: Adopted with modifications from FAO 2014

3.3 Procedure for Land Acquisition and Compensation in Tanzania

Compulsory land acquisition is a power of the government but it is also the process by which that power is exercised. In Tanzania, the principal legislation that governs land acquisition and compensation is the Land Acquisition Act.⁹⁵ This particular statute provides for procedure to be followed when land is compulsorily acquired from individual

⁹⁵Act No.47 of 1967 [RE 2019]

owners. The Land Act states principles of compensation and dictates the compensation package as well as procedure for handling claims.⁹⁶ It also establishes the Land Compensation Fund. Several other statutes contain provisions on land acquisition and/or compensation, albeit brief.

The procedure for land acquisition as provided in the Land Acquisition Act is not provided by a single section, rather, a combination of sections.⁹⁷ It is not therefore possible to find a particular section in the said statute which outlines the steps from the first to the last. The procedure which is usually followed has emerged rather gradually from land acquisition practices as authorities implement provisions of the land acquisition law. The procedure is as follows:

3.4 Planning for the Land Acquisition

The planning phase should include the identification of any lands to be acquired. Option should be analyzed and presented to the public for their understating and consultation in order to choose the site that suitable and presented fewest obstacles and the best outcomes, having regard to all impacts including those on any owners and occupants. The acquiring authority should obtain necessary permissions, if any for the compulsory acquisition of the land identified for the project. Land Acquisition Act empowers the acquiring authority to undertake preliminary investigation on the land to be acquired to see if that land will

⁹⁶Cap 113 [RE 2019]

⁹⁷Act No.47 of 1967 [RE 2019]

meet intended purposes to clear site and set out and mark the boundaries of the land to be acquired.⁹⁸

3.4.1 Notice to Acquire the Land

The Land Acquisition Act provides that for any land to be acquired for public purpose, minister responsible shall give notice to the affected persons of intention to acquire their land.⁹⁹ The provision of notice of the intention to compulsorily acquire land protects the rights of affected people. Notice should be given as early as possible to allow people to object to the acquisition of their land, to submit compensation claims, or to appeal against incorrect implementation of the procedures. Individuals or communities to be affected need to be notified in writing and using Government Gazette and a public media form preferably using popular daily paper. Where persons with interests who are absent or who cannot be found on site have to be notified by a notice fixed on exposed part of their property.¹⁰⁰ Such notice describes the purposes for which the land is required and prevents property owners from doing further developments on those lands. A public notice will enable any person with interests or claims to have interests on land in question to make objections within six weeks from the date of publication. In Tanzania timing of notice varies a period of three to six months. To ensure that all affected people are aware of the project, notice should be publicized as widely as possible.

⁹⁸Ibid s 5

⁹⁹ Ibid s 6

¹⁰⁰ Ibid s 8

3.4.2 Public Meeting and Sensitization

Public meetings provide an opportunity for the people to learn more about the project, to receive answers to their questions about the process and its procedures and to voice their concerns. The meeting illustrate accountability and transparency when the government has to justify its proposal to compulsorily acquire land interested parties must be educating and sensitized on various approaches and steps to be adopted during the exercise.

Discussion concerning compensation rate for crops, land, construction and various payable allowances to be paid as per the statute must be done. During this time scientific explanations for any query or question raised by the PAPs must be addressed. Open discussion at public meetings should help the government to improve its understanding of the needs and concerns of affected communities and to prepare response that reduce the number of challenges to the compulsory acquisition.

3.4.3 Property Identification and Valuation

The Land Acquisition Act provide information on how valuation for compensation should be done.¹⁰¹ During these phase properties that fall within the area to be acquired are identified and inspected by qualified valuer after which valuation report and compensation schedules are prepared. These deliverables are then checked by the local leaders at village or hamlets in case of urban acquisition, district and regional authorities within the area

¹⁰¹ Act No.47, 1967 [RE 2019], s 14

where acquisition is being undertaken before they are approved by the Chief Government Valuer.

3.4.4 Compensation Payment and Resettlement

Land Acquisition Act provides that the government should pay compensation before the land is acquired.¹⁰² Once the valuation has been approved, PAPs collect their compensation cheque from a respective Land Office of District Commissioners Office. Some alternative building plots are also allocated to the affected people whenever there is an agreement to do so at a price determined but are given first priority in plot allocation. However, there are so many complaints that the compensation paid is inadequate. This is a result of the public interest in keeping costs as low as possible is important, this concern should not deprive people of the equivalent compensation they need in order re-establish their lives after the loss of their land. Although legislations have provided for adequate, prompt and fair compensation there is no proper enforcement of these laws and delay in implementation of CLA projects.

3.4.5 Taking Possession, Survey and Transfer of a Property Rights

According to the Land Acquisition Act the acquiring authority is required to take possession of the acquired land within six weeks from the date of publication of the notice in the Government Gazette.¹⁰³ However if such land is urgently required, the President

¹⁰² Ibid s 11

¹⁰³ Ibid s 7

may acquire and take possession of such land in less than six weeks.¹⁰⁴ After taking physical possession of the land, certificate of titles of the acquired properties ought to be surrendered to the state so that the new owner takes them over. At times the acquired land could require a fresh survey or subdivision by resurveying and an issuance of new certificates of occupancy which ought to be registered in name of the new owner.

3.4.6 Lodging and Hearing of Appeals

During this phase owners of land rights so acquired are allowed to appeal to the court of law if they are not satisfied with the acquisition. Normally this occurs where the two parties i.e. the acquiring authority and PAPs fail to reach an agreement on issues identified in the Section 13(1) (a-f) of Land Acquisition Act.¹⁰⁵ It has been observed that in many acquisition programs, interested persons raise their dissatisfactions either after the publication of the notice, during or after program implementation especially where sensitization meeting were not conducted satisfactorily. During this phase a public body or the acquiring authority may appeal against compensation which is found to be excessive or too low. In each case aggrieved individuals have the mandate to challenge compulsory purchase powers, order and notices in the court law.

¹⁰⁴ Ibid s 7(1)

¹⁰⁵ Ibid

3.5 Conclusion

This chapter discusses the legal framework governing compulsory land acquisition, procedure for land acquisition and compensation, and stakeholders involved in compulsory land acquisition and compensation in Tanzania. It gives a brief description of each of the statutes which provides for compulsory land acquisition and well as procedures involved. The statutes discussed include the Land Acquisition Act 1967, The Land Act 1999, Village Land Act 1999, the Urban Planning Act 2007, and several others. Stakeholders involved in compulsory land acquisition and compensation are identified as they form a crucial part of the institutions involved in the process, for example, the ward executive office and officers, ministry responsible for lands, as well as projects and project implementers. Towards the end, the chapter examines the procedure for land acquisition and compensation in Tanzania. It is against this procedure that the variables of this research are analyzed. The next chapter presents findings of the study and discusses the same.

CHAPTER FOUR

ADEQUACY OF THE LAW IN PARTIAL PROPERTY ACQUISITION

4.1 Introduction

This study set out to examine the existing legal gaps on the laws governing partial property acquisition and compensation so as to devise measures to address the said gaps. The main focus relates to the legal challenges of compensating the affected populations given the fact that only portions of properties are being acquired due to the nature of the projects being implemented. Specifically, the objectives were to explore the existing legal gaps on the laws governing partial property acquisition and compensation, to examine whether the current regulatory framework guarantees fair and adequate compensation for partially acquired properties, and to recommend measures to be taken to improve the situation. In this chapter findings are presented and a discussion is made with reference to country laws, theories and universally accepted principles. This being partly an empirical legal study, presentation of findings and their discussion is preceded by description of the study areas and the nature of acquisitions so as the reader can understand the subject matter.

4.2 The Nature of Acquisition in the Study Areas

As it has been pointed out in section 1.7 of this work, the study has been conducted in Kilakala ward, Temeke municipality where land was acquired for infrastructure upgrading project and Ufukoni and Mitengo wards where land was acquired for construction of a gas

pipeline running from Mnazibay area in Mtwara rural district to Somanga area in Kilwa.

Below are maps of the study areas.

The nature of the projects in the study areas called for acquisition of only a strip of land because it was only a corridor that was needed. For the case of Kilakala ward in Temeke, a somewhat narrow corridor was required for construction of a storm water drainage. Apparently, there was an existing trench which served the same purpose but was too narrow and shallow to accommodate all the storm water during rain seasons, hence the need to improve and expand. Properties along the existing trench were too close such that expansion of the trench affected most of the houses, albeit slightly. Strips of land so acquired had been accommodating mostly ancillary structures such as toilets, kitchens, bathrooms, septic tanks, or cesspools. In some of the properties, even main houses were affected. The route of the pipeline starts at Mnazibay which is in Mtwara rural district, passes through a few wards of Mtwara municipality, and goes through other villages of Mtwara rural district again before entering Lindi region. In Mtwara municipality the pipeline passes through Ufukoni, Mitengo and Magengeni wards.

4.3 Inception of the Projects

Construction of the storm water drainage channel in Kilakala ward was part of the DMDP project which was conceived in 2011 aiming at constructing feeder roads, storm water drainage channels, and street roads measuring approximately 31.86km, 26.7km, and 165km respectively. Of these, feeder roads measuring 14.51km, storm water drainage

channels measuring 8.9km, and street roads measuring 55km were in Temeke. About 2.9 km of the stormwater drainage channel (the subject of this study) runs across Kilakala ward. Given the population density of Temeke Municipality (8957/km²), a channel running for 2.9 km is likely to have far reaching effects to the residents and might affect a good number of properties.¹⁰⁶ For example, in the study area, 419 properties were affected.

The Mnazibay- Dar es salaam Gas Pipeline Project commenced in 2011 and aimed at transporting gas from Mnazibay to Da es salaam. A sixty meters corridor of land had to be acquired from Mnazibay area in Mtwara rural district to Somanga area in Lindi, a distance of approximately 290 kilometres. In the study area, that is Ufukoni Ward, the said corridor was 3.1 kilometres.

4.4 Planning Land Acquisition

In 2015, the responsible authority Temeke Municipal Council conducted an investigation and identified Kilakala ward and decided to develop local roads and surface water drainage. The process of investigation was done in collaboration with local authority and residents of Kilakala wards. During investigation, boundaries of the specific area were earmarked, conditions assessed and number of properties to be affected by the project estimated whereby 419 properties were expected to be affected. Section 5(1) of Land

¹⁰⁶ Administrative Units Population Distribution Report 2022 (National census)

Acquisition Act provides that three days' notice should be given to the occupiers prior to the investigation and in case damage occurs at this stage compensation should be paid.¹⁰⁷ The respondents confirmed that they were given notice but complained that the meeting was scheduled to take place during working days which made it difficult for other property owners to attend. Sixty one percent (61%) of the respondents in Kilakala ward were of the view that the legislation should specify on timing of the meetings so that there is no room for officials to use the legal lacuna to fix time which will guarantee presence of some people they do not want to attend. On the contrary, respondents of Ufukoni ward were of the view that organizing meetings to take place during working days is not a problem. Only 12% of them thought that the timing of the meetings was not right. One of the interviewees in Kilakala said that:

“These people are tricky; they arrange meetings to take place when all elites are not around so that they (officials) do not have to answer technical questions”

Apparently, the compulsory purchase legislation is silent on when should the meeting be conducted as it does not specify the day or time. The spirit of the legislation is to be flexible so that time arranged for the meetings is impliedly desirable to all or most stakeholders. Respondents' complaint can or cannot be right. Setting of the timing of the meeting in the legislation might lead to other complexities which may lead to confusion. The issue of timing of the public meetings emerged in Rhode Island ACLU and the *Barrington Times v Barrington School Committee* 2009 USA, whereby the residing

¹⁰⁷ Act No.47 of 1967

judges declared that holding public meetings during the times when most community members are not around is an offense, punishable by laws of USA.¹⁰⁸

4.5 Notice to Acquire Land

In the study areas, the requirement of giving notice to the public about an expropriation was observed. However, the means used to notify them seemed to be the problem. In Kilakala ward, Temeke respondents claimed and officials concurred that they were not served with written notices as individuals but instead they got information from the Kilakala WEO's office notice boards and from the public media (Television and Radios). Through public media, the government affirmed that the rights and interests of all who would be affected by the Project would be taken into account. Those who owned property in the project area were advised not to sell their plots randomly. It was made clear that the Temeke Municipality would coordinate the exercise and all stakeholders were called upon to offer their cooperation. In Ufukoni ward, Mtwara; written notices were served as required by the law. However, the legislation requires the notice to be served personally or left at the persons place of business or abode.¹⁰⁹ 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.

¹⁰⁸Rhode Island ACLU and the Barrington Times v Barrington School Committee 2009 USA

¹⁰⁹ The Land Acquisition Act, No.47 of 1967, s.6

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 is an urgency the period can be less than six weeks. Here the law generalizes as if all projects will require whole property acquisition.

Specifically, the law says:

“The minister may, by notice under section 6 or by any subsequent notice, direct the persons upon whom the notice is required to be served under section 6 to yield up possession of such land after the expiration of the period specified in the notice, which period shall not be less than six weeks from the date of the publication of the notice in the gazette in accordance with subsection (3) of section 8. Provided that where the President has certified that the land is urgently required for a public purpose, such persons may be required to yield up possession of the land within such lesser period as the President may direct”¹¹⁰

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

¹¹⁰ Ibid, s.7

same issue was critically examined and determined in *National Bank of Commerce v Suleiman Nassor Ally*.¹¹¹

4.6 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. In the study areas, public meetings were used as a medium to inform the community about the project. The intention of the government to acquire their land was explained and that the entirety was for the public good. The local community had opportunities to ask questions and consult local leaders for clarifications. Having understood government's intention, some of the residents started preparing themselves to relocate into other neighborhoods of their choice. In Kilakala ward Temeke, respondents confirmed that 3 public meetings were conducted during the sensitization period and that a radio program was aired (During Power Breakfast of Clouds FM) where project details were discussed. Sensitization was also conducted by a special committee which was formed that purpose which was also to deal with complaints from the affected persons later. Officials like WEO and his team participated in awareness creation.

¹¹¹(1989) TLR 67

Table 4.1: Sensitization meetings conducted in Kilakala Ward

Ward	Date	Number Of Partipants	
		Male	Female
Kilakala Ward	13/08/2015	73	23
Sandali Ward	14/09/2015	24	30
Sandali Ward	19/04/2017	43	25

Source DMDP Office Temeke Municipality, (2021)

In Mtwara Municipality, only one sensitization meeting was conducted. The meeting was held in Mikindani area and residents all wards where the pipeline goes through were invited to attend. These are Ufukoni, Mitengo, and Mikindani. A total of 102 residents attended the meeting.

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 draw their legality from compensation guidelines only. Second, attendance in the meetings is very low compared with the population of the areas. 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 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. In comparison, consider populations of the said wards in Table 3 below with their respective attendances.

Table 4.2: Population of study areas and neighboring wards

Ward	Total	Number Of Partipants	
		Male	Female
Kilakala Ward	37,711	18,950	18,761
Sandali Ward	42,010	21,181	20,829
Ufukoni	22,352	10,561	11,791
Mitengo	5,979	2,720	3,070
Magengeni	2,731	1,318	1,413

Source: URT, Administrative Units Population Distribution Report 2022

Comparing average populations and average attendances from tables 2 and 3 it can be seen that 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.

There are several reasons for PAPs not participating on sensitization in Kilakala, 61% of them are explain that the meeting was held during working days, so they could not attend because of job responsibilities. Others explained that, they do not live in the area where the meeting was conducted, so they were not aware about the meeting date. Others said that the arrangement of the meeting was very poor such that some PAPs they came late at the end of the meetings. The same reasons were shared by respondents in Ufukoni and of all the reasons, location of the meeting was ranked highest.

4.7 Compensation Assessment: Bases and Methods

For the case of Kilakala, property identification assessment of compensation was done by Valuers from Temeke Municipal Council. 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.¹¹² Also, the Land Regulations of 2001 specifies the basis of valuation to be market value. This subsidiary legislation states that:

The basis for assessment of the value of any land and exhausted improvement for purposes of compensation under the Act shall be the market value of such land.¹¹³ The market value of any land and exhausted improvement shall be arrived at by the use of comparative method evidenced by actual recent sales of similar properties or by use of income approach or replacement cost method where the property is of special nature and not saleable.¹¹⁴

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

¹¹²Land Act No.4 Cap 113 RE 2019, s.3(1)(g)(i)

¹¹³ Land (Assessment of the Value of Land for Compensation) Regulations, 2001; Regulation 3

¹¹⁴ Ibid Regulation 4

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.

According to the valuers of the Kilakala properties, the methodological challenge was overcome by using what they referred to as *before and after methods*. Here the value of the whole property is first estimated and then the value of the remaining property is established to get their difference if the value of the portion that is to be acquired.¹¹⁵ The

¹¹⁵ VarnavasPashoulis, Valuation Analysis of Partial Property in Compulsory Acquisition, FIG, Amsterdam, 2020

technique also supported by courts of law, for example in USA and the UK.¹¹⁶ The impact of the partial compulsory acquisition on the remaining part are much taken into consideration and they are accounted for when determining the amount of compensation to the property owner. The procedure for before and after technique is not provided in the legislation at all. The valuers also claimed that adverse effects (injurious effects) of the partial compulsory acquisition on the remaining land must also be assessed. This is a requirement of the Land Acquisition Act, 1967 on addressing the effects of partial acquisition through provisions of severance and injurious affection. Specifically, the statute says:

“In assessing compensation for any land acquired under the provisions of this Act, the Minister or the Court, as the case may be, shall, subject to section 12 (c) take into account the damage, if any, sustained by the person having an estate or interest in the land by reason of the severance of such land from any other land or lands belonging to the same person or other injurious effect upon such other land or lands”¹¹⁷

However, when asked how they established the amount to compensate for injurious affection, they could not explain. The reason was the difficulty in assessing the effects, it be fall in value or otherwise, immediately after the acquisition. 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

¹¹⁶ Estate of Dame Bernice Lake QC v Attorney General of Anguilla [2022] UKPC 0024; Pener v King [2017] referring to Rostine v City of Hutchinson [1976], Kan 320 (Supreme Court of Kansas)

¹¹⁷ The Land Acquisition Act, Cap 118 [R.E 2019], S.14

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*.¹¹⁸ 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. The box below illustrates the point that effects of partial acquisition are multifaceted.¹¹⁹

In general, compensation aims to give the owner of the acquired property money in the value of the taken property. Consider a partial acquisition of Farm No. 237 Ufukoni Area Mtwara Mikindani. Prima facie, if the state takes two-thirds of Farm No. 237, it should give the owner two-thirds of the value of Farm No. 237. But in reality, matters are not so simple. Farm No. 237 may not be of consistent quality; part may be rocky, and the rest flat. Moreover, taking two-thirds of Farm No. 237 affects the value of the remaining one-third. It may no longer be possible to use Farm No. 237 in the same way as before - the lot, for instance, may no longer be large enough to grow certain crops. And new uses of Farm No. 237 may now be possible—for example, the new road created in part from the taken property may enable a new factory to get products to the market cost efficiently. The relationship between the partial taking and the value of what remains of Farm No. 237 is a complex one.

Box 4. 1: Illustration of challenges posed by compensating for partial takings

Source: Adopted with modifications from Bell and Parchomovsky 2022¹²⁰

4.8 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

¹¹⁸*Southern Range Nyanza Limited v Uganda National Roads Authority v Cowi Limited* [2014] HCU 423 (High Court of Uganda)

¹¹⁹Bell 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

¹²⁰*Ibid*

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.¹²¹ 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.¹²²

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

¹²¹ Land (Compensation Claims) Regulations, 2001; Regulation 10.

¹²² The Land Acquisition Act No.47, 1967; s. 9&10.

assessment. Gas pipelines have led to community vulnerabilities before, with harmful effects including disruption of land, ecosystem and communities, carbon emissions, spills, leaks and explosions¹²³. 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. This is in contravention to section 9 and 10 of the Land Acquisition Act, 1967. However, none of the PAPs lodged a complaint because the acquiring authority did not agree to take and compensate the whole of his/her property. In interview with one of the valuers of Temeke municipal council he had this to say:

“During implementation of CLA in Temeke, there are some areas we were forced to acquire the whole property, even though we only need part of it, this situation occurred when the house is no longer habitable to PAPs with his/her family. partially. There are about 38 cases in Kilakala on this matter, the project has been extended in order to deal with these cases and to complete the projects in various areas of Temeke Municipality”(Interview on 3rd May 2023)

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. During the interview with PAPs, one respondent said:

“... Siwezi kukubari kulipwa nyumba nyangu nusu, wewe mwenyewe unaona mimi nina familia kubwa, sehemu inayobakia haiwezi kunitosheleza ukizingatia wamechukua vyumba viwili, kimoja cha kwangu na kingine cha watoto, mimi sina eneo lingne la kujenga chumba hapa”. Interview on 9th May 2023)

¹²³O’ 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

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. Again, when asked how severance and injurious affection were reflected in the compensation packages, valuers admitted that, these matters were not considered due to methodological difficulties in estimating the effect of severance.

4.9 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, decide on which properties to be regarded as fully affected and which ones are partially affected. Those considered as fully affected would be compensated fully, and this category included properties that have been affected more than three living rooms. Those only 1 or 2 rooms affected are categorized as partially affected and their compensation would be for the two or one room.

In Kilakala 21 of the PAPs did not accept partial acquisition of their property, despite the public meetings conducted to raise awareness. Their reasoning was that compensation was

not fair, because the remaining area was no longer habitable to them with their family and there was no available place to expand the houses. The gap in law led to these valuers making their own rules of categorizing property.

In Ufukoni ward a significantly higher number of the project affected persons wanted the acquiring authority to take the whole of the property instead of a party only. Twenty three (23) respondents were of the view that if a victim of compulsory land acquisition no wants to live close to the gas pipeline, the authorities should give him/her compensation for the whole property so that they can relocate. Apparently, these people said that they had wanted to move to somewhere else because living close to the gas pipeline is dangerous because there are chances that the pipe can explode. The respondents made reference to cases where explosions of gas pipes and gas processing factories had occurred in other countries like China and Russia. However, a discussion with the valuers contradicts with PAPs' reason for requiring a total relocation. They asserted that, PAPs consider compensation as a means to get money so that they can use for other issues like marrying additional wives. This emanates from the belief that project financiers are white people and they are therefore rich people, a belief that is subconscious shared by developing nations world over. This belief conforms to theories emphasizing racial supremacy for example Durante F. and Fiske S.T.¹²⁴

¹²⁴ Durante F. and Fiske S.T., (2017). How Social-class Stereotypes Maintain Inequality. *Current Opinion in Psychology*, Vol.18, Pg. 43-48.

4.10 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. During the interview the WEO he explained that:

“...Wakati wa ulipwaji wa fidia, wanailipwa ni wenye nyumba pekee lakini mradi uliwaathiri sana wapangaji, mfano kuna sehemu yaliathirika maduka zaidi ya matatu na wenye nyumba sio wenye hayo maduka wala hawaishi hapo ila wakati wa kulipwa fidia ya kupotea kwa faida analipwa mwenye nyumba ila kwa uhalisia sio haliyeathirika na mradi....” (Interview on 8th May 2023)

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.

4.11 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 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 and sheep rollers. 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.

4.12 A Recourse to Theories

A number of theories were identified and briefly discussed in section 2.4. These are the Natural Law of Property, the Utilitarian Theory of Property, the Social Utility Theory of Property and Personhood Theory of Property. Based on what transpired on the case study

areas some of the issues contradicted with the theories while others are inline with the theories. The right to quiet enjoyment to both property owners and their tenants was infringed and this had a more serious effect on the tenants. This is contrary to Tanzanian land laws and generally accepted principles.¹²⁵ This was especially so in Kilakala ward because rear sections of the property, where the existing drainage channel passed, were mainly affected. Apparently, on this side is where most of the renting rooms were situated together with other property ancillaries like kitchens, bathrooms, and toilets. The question of societal welfare as advocated by the Utilitarian Theory of Property and Social Utility Theory conforms well with the partial property acquisitions done in the study areas because they were done for a public purpose. None of the respondents contested the projects as being done for individual gains because the objectives were clear in both projects, i.e. providing a storm water drainage in the case of Kilakala ward in Temeke and extracting natural gas in the case of Ufukoni ward in Mtwara municipality. This being the case, the Personhood Theory of Property falls flat on our case study areas because this particular theory favors private interests of public ones on the belief that private interests create a sense of stability and security to individual property owners. The theory insists on property rights as an aspect of personal identity while in the study areas, collective interests were given an upper hand. As it has been pointed out in discussions of the empirical chapter, the doctrine of severance was not adhered to in the study areas.

¹²⁵Hay, Garin. *Quiet enjoyment*. Diss. Mills College, 2015.

4.13 Conclusion

This study revealed that some of PAPs in partially acquired properties are negatively affected by the undertakings due to gaps in the existing legal framework. The said gaps relate with the definition and timing of the sensitization meetings, notice to acquire land, bases and methods used to assess compensation, the definition of the word compensation, fairness of the acquisition process and compensation, and tenants' rights and obligations. These matters are not covered stringently therefore leading to complexities in implementation which inturn affects the adequacy and fairness of the compensation. As for definitions, one would expect crucial terms of sensitization (awareness creation) and compensation to be clearly defined so as to avoid ambiguities. However, not a single statute among all examined has defined the terms, with sensitization not being mentioned in any of them. Towards the end of the chapter, a recourse to the theories which informs the study is made so as to gauge their applicability and conformity with the practice during partial land acquisitions.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This study set out to examine the existing legal gaps on the laws governing partial property acquisition and compensation so as to devise measures to address the said gaps. Specifically, the objectives were to explore the existing legal gaps on the laws governing partial property acquisition and compensation. (ii) to examine whether the current regulatory framework guarantees fair and adequate compensation for partially acquired properties, and (iii) to recommend for improvement in the regulatory and institutional framework. Employing doctrine and empirical legal scholarship techniques, a number of gaps in the legislation governing compulsory land acquisition were identified and these pose challenges in acquisitions which involve only sections of the properties and compensating for the same. Specifically, gaps revolve around preparation and notice of acquisition, bases and methods for assessing compensation amount as provided by the law as well as technical challenges posed by the requirement imposed by the law, severance and other injurious effects, and lastly treatment of third party interests such as leases.

5.2 Summary of Research Findings

In this particular study, it was revealed that the land acquisition legislation is not stringent enough on several matters a fact which brings about challenges in acquiring and compensating the partially acquired properties. First the legislation is silent of 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.¹²⁶ 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. As such valuers in my one of my study areas categorized acquisition of more than 3 rooms as a case that requires full acquisition, and less than 3 rooms a partial acquisition. 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.

5.3 General Conclusion

In this study we explore existing legal gaps on the laws governing partial property acquisition and compensation so as to devise measures to address the said gaps. The study employs methods of doctrine research and empirical legal scholarship to address

¹²⁶The Land (Compensation Claims) Regulations, 2001

objectives which are (i) to explore the existing legal gaps on the laws governing partial property acquisition and compensation, and (ii) to examine whether the current regulatory framework guarantees fair and adequate compensation for partially acquired properties. Employing doctrine and empirical legal scholarship techniques, a number of gaps in the legislation governing compulsory land acquisition were identified and these pose challenges in acquisitions which involve only sections of the properties and compensating for the same. Specifically, gaps revolve around preparation and notice of acquisition, bases and methods for assessing compensation amount as provided by the law as well as technical challenges posed by the requirement imposed by the law, severance and other injurious effects, and lastly treatment of third-party interests such as leases. These gaps lead to compensation not being fair enough a phenomenon which increases complaints from the affected communities. 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.

5.4 Recommendations

Recommendation of this study are drawn from study findings and they are geared towards making land acquisition and compensation in the country fair and adequate. Considering the data collected from two projects in two wards located in two different districts and regions, the study recommends the following; -

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 so as to do away with the legal gaps identified in this study. The question of detailed legislation in land acquisition and compensation, was also stressed by Arul and Murali in their work titled A Critical Review on Land Acquisition and Valuation Process across the World.¹²⁷ 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.¹²⁸ Having a separate part which regulates partial property acquisition would enable a more detailed coverage of the subject matter, rather than grouping it in general acquisition facets. Alternatively, guidelines for partial property acquisitions should be created. Again, a guideline would explain a step by step process of how compensation of partially acquired properties can be assessed. So, law making organs should be well committed towards ensuring that the land acquisition legislation guarantee fairness.

¹²⁷ Arul V.M. and Murali K., A Critical Review on Land Acquisition and Valuation Process across the World, *Journal of Mechanical and Civil Engineering*, 2015, Vol.12, No.5, pp.9-14

¹²⁸ Southern Range Nyanza Limited v Uganda National Roads Authority v Cowi Limited [2014] HCU 423 (High Court of Uganda)

Secondly, acquiring authorities should adequately plan the project before actual 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. Quite a good number of land acquisition and compensation projects had stalled at the compensation payment stage due to poor planning on the financial side of things. Payment of compensation was paid well beyond the valuation date a fact that raised a lot of concerns from the general public, for example land acquisition for expansion of the then Dar es Salaam International Airport (Now Mwalimu Julius Kambarage Nyerere International Airport), popularly tagged as the Kipawa case; land acquisition and compensation for expansion of the Tanzam Highway from Kimara to Mbezi, proposed construction of the Dar es Salaam – Chalinze Expressway; and many others.

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APPENDICES

Appendix 1: Research Clearance Letter

THE UNITED REPUBLIC OF TANZANIA



MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY
THE OPEN UNIVERSITY OF TANZANIA



Ref. No OUT/ PG202100695 22th may, 2023

Director,
Temeke Municipal Council
P.O Box 46343,
DAR—ES-SALAAM

Dear Director,

RE: RESEARCH CLEARANCE FOR MR. DONALD MASUNGA, REG NO: PG202100695

2. The Open University of Tanzania was established by an Act of Parliament No. 17 of 1992, which became operational on the 1st March 1993 by public notice No.55 in the official Gazette. The Act was however replaced by the Open University of Tanzania Charter of 2005, which became operational on 1st January 2007. In line with the Charter, the Open University of Tanzania mission is to generate and apply knowledge through research.

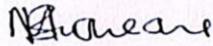
3. To facilitate and to simplify research process therefore, the act empowers the Vice Chancellor of the Open University of Tanzania to issue research clearance, on behalf of the Government of Tanzania and Tanzania Commission for Science and Technology, to both its staff and students who are doing research in Tanzania. With this brief background, the purpose of this letter is to introduce to you **Mr. Donald Masunga, Reg. No: PG202100695**) pursuing LL.M. We here by grant this clearance to conduct a research titled **“LEGAL CONUNDRUMS IN COMPENSATING PARTIALLY ACQUIRED**

PROPERTIES IN TANZANIA". He will collect his data at your Municipal from 22nd May to 30th November 2023.

4. In case you need any further information, kindly do not hesitate to contact the Deputy Vice Chancellor (Academic) of the Open University of Tanzania, P.O.Box 23409, Dar es Salaam. Tel: 022-2-2668820. We lastly thank you in advance for your assumed cooperation and facilitation of this research academic activity.

Yours sincerely,

THE OPEN UNIVERSITY OF TANZANIA



Prof. Magreth S. Bushesha

For: **VICE CHANCELLOR**

Appendix 1: Research Permit Letters



**THE UNITED REPUBLIC OF TANZANIA
PRESIDENT'S OFFICE, REGIONAL
ADMINISTRATION AND LOCAL GOVERNMENT
TEMEKE MUNICIPAL COUNCIL**



In reply, please indicate.

REF:TMC/MD/U.21/30/35

Date: 23 May, 2023

TEMEKE MUNICIPAL COUNCIL

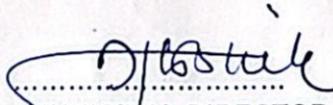
RE: RESEARCH PERMIT FOR: MR. DONALD MASUNGA

Please refer to the heading above.

This is to inform you that, permission is granted to the above mentioned student/researcher from **OPEN UNIVERSITY OF TANZANIA** to conduct researcher on **LEGAL CONUNDRUMS IN COMPENSATING PARTIALLY ACQUIRED PROPERTIES IN TANZANIA.**

The study will be conducted from **24 May, 2023 to 30 November, 2023.**

Please give with necessary assistance.


For: **MUNICIPAL DIRECTOR**

**Mny: Mkurugenzi Mtendaji
Mandaa Ya Tembeke**



THE UNITED REPUBLIC OF TANZANIA
PRESIDENT'S OFFICE
REGIONAL ADMINISTRATION AND LOCAL GOVERNMENT
MTWARA MIKINDANI MUNICIPAL COUNCIL



Ref. No. MM/MC/Z-62/70/81

Date: 24th May, 2023

The Open University of Tanzania,
P.O.Box 23409,
DAR ES SALAAM.

Ref: **RESEARCH PERMIT TO MR. DONARD MASUNGA.**

Refer to the heading above.

2. This is to inform you that permission is granted to the above mentioned student /researcher from Open University of Tanzania to conduct research on Legal Conundrums in Compensating Partially Acquired Properties in Tanzania.
3. The study will be conducted from 26 May, 2023 up to 30 November, 2023
4. Thanks.

Godfrey Malambo
For: **MUNICIPAL DIRECTOR**
MTWARA-MIKINDANI.

Copy for: **MUNICIPAL DIRECTOR**
MTWARA-MIKINDANI.

For: **MUNICIPAL DIRECTOR**
MTWARA - MIKINDANI
P.O. Box 92
MTWARA