

# COAST LAND CONFLICTS

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## LAND CONFLICTS IN THE COAST OF KENYA.

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### 1.0 INTRODUCTION

- 1.1 The coast of Kenya can be defined using three parameters, namely ecological zoning, administrative boundaries and latter day development aspirations. Firstly the coast of Kenya can be said to be an ecological zone that is hemmed in by the Indian Ocean to the east and the Nyika Plateau to the west, and exhibiting such unique features of climate, relief and ecology as to be categorised as one of Kenya's five ecological zones.
- 1.2 Secondly, it can be defined as an administrative unit with its headquarters in Mombasa and covering the districts of Kwale, Mombasa, Kilifi, Tana River, Taita Taveta, Malindi and Lamu.  
Thirdly, one can look at it as a development area under the auspices of the Coast Development Authority which covers the districts above and the southern half of Garissa District.
- 1.3 The coast of Kenya is a distinct ecological and geological region which starts at the Indian Ocean and ascends to a height of 300 metres above the sea level. The land is flat immediately to the west of the ocean and rises at Mazeras. There are a few high points in Kwale and Taita Taveta districts. The areas immediately to the west of the shore have thick forests which contain valuable and rare hard-woods like mvule and mangrove, and is home to some very rare animal species. This is as a result of favourable combinations of rainfall and soil conditions. Further inland, the density of the tree population is gradually reduced to that of the Nyika and in a few cases, open plains.
- 1.4 Economic activities in the region are dependent on the obtaining climate and physical conditions but generally range from pastoralism and ranching to crop farming. Exploitation of the forests and other natural resources like minerals is important. The sea is exploited for its fish. The region is the mainstay of the country's tourism industry.
- 1.5 The coast is central to the history of Kenya. It is here that the Bantu, the largest of the ethnic groups of African stock, first arrived in the country. As early as the ninth century A.D. traders from the Indian Ocean and the Arabian peninsula landed here. Vasco da Gama, the earliest visitor of

European ascent on record, passed by on his way to India in the 15th century. He bequeathed the area with two landmarks: Fort Jesus in Mombasa and the Vasco da Gama pillar in Malindi.

- 1.6 The Arab traders, before Vasco da Gama, intermarried with the Bantu to produce the Swahili language and people. Arab settlements of old like the Gede and Jumba la Mtwana are conserved historical sites and tourist attractions. Their most enduring legacy, Islam, is the most potent socio-economic influence in the area.
- 1.7 The Portuguese pillaged the coast and terrorised the inhabitants for nearly four centuries. They destroyed many settlements in the process. Various Arab tribes dominated the Coast after the departure of the Portuguese. The Mazrui and Seyyid Said families stand out among these. The former ruled Mombasa until they were deposed by the latter in the mid-19th century. The Seyyid family ruled the east coast of Africa till the close of the 19th century controlling the flourishing ivory and slave trade. In Kenya they controlled a 10-mile coastal stripe from Vanga in the south to Witu in the north. A few Arab families controlled huge chunks of land. After the abolition of the slave trade, the coast was recipient of European commerce and evangelism accompanying the scramble and partition of Africa. The port of Mombasa was the entry point of European colonialism and all subsequent foreign influences in the early colonial period. The Uganda Railway gave it a large hinterland and hence the port's logo, "Gateway to East Africa".
- 1.8 At independence the coast had people of African stock like the Miji Kenda, and Swahili, Arab, Asian, Somali and European stock. A large immigrant population of upcountry Africans also settled there as workers in the docks and settlers in government designated settlement schemes.
- 1.9 After independence the coast region was constituted into one of Kenya's administrative provinces. The administrative policies and legal regime put in place by the first African government were typical throughout Kenya. In relation to land special legislation was made in the form of the Mazrui Land Act of 1969 and the Wakf Commissioners Act. The purpose of the former was to regulate the transactions of the Mazrui lands, the latter to enable administration of public endowment properties. The Mazrui Lands Act was repealed in 1989, in order to make more land available to squatters and the landless.

A rather complex province was thus left largely undifferentiated from the others. Each of the districts has at least one major urban centre. The demographic and urbanization statistics for the coast bear a great resemblance to similar data for Kenya's other two high potential and arable regions - the Lake Basin and Central Highlands. Population growth statistics are typical of the countrywide trend. (Table 1.) However, between 1969 and 1979 Lamu District registered a 6.9% growth rate per annum, the highest in the country (average 3.8% p.a.).

- 1.10 Urban population in Kenya was estimated at 19% of total population 1989 and is expected to reach the 45.7% mark in 2025. See Table 2. In that year, the population of Mombasa (275 sq. km.) was estimated at 500,000 people. About 25% of this population lives below the poverty line.
- 1.11 Rural populations are small holder farmers owning less than a hectare of land or pastoralists. Most are poor. In Kwale District, 22.5% of the population are landless. About 50% of this section of the population earn less than sh. 600 per month. Rapid population growth has greatly increased the demand for land and the fruits of land. Land conflicts have become inevitable.
- 1.12 Land matters at the coast have been explosive. Land disputes at the village level occasioned by boundary disputes or inheritance have once in a while ended in violence and even death. Conservation measures have meant that residents of conserved properties are subjected to various forms of discomfort. Land grabbing is the norm for the process that conveys public land to private hands in circumvention of the prescribed allocation procedure. Roads, toilets, schools, car parks, playgrounds and public spaces have been rendered endangered. Increased profitability in tourism facilities has seen the grabbing of forests, island nature reserves, delta wetlands and the destruction of irreplaceable flora and fauna that take ages to mature. Large populations of Miji Kenda live impoverished squatter lives. Industrial pollution is on the increase. The list is endless. In all these cases one's individual interest is pitted against another. If conflict between nations sets the wheels of war rolling, conflicts over land set in motion violence, court action, state intervention and many varied responses.

## 2.0 RESEARCH METHOD

2.1 Data for this paper were collected using the following methods :

- Analysis of recent official documents, statistics, research reports and media materials especially the press, radio and television reports on land matters relevant to the coast.
- Interviews with officials, landowners, residents and market observers.
- Participatory techniques based on actual interaction with property market operators i.e. appraisers, lawyers, landlords, developers and renters; professional interaction with architects, planners and engineers practising in the region also yielded useful information.

2.2 Thus the data collection exercise had to be based both in Nairobi and Mombasa, with limited travel to Kwale and Kilifi districts.

2.3 Data analysis has emphasised qualitative aspects, with limited use of statistics as and when appropriate. In subsequent phases it may be possible to develop graphics for presentation purposes if needed.

## 3.0 LAND TENURE SYSTEMS

3.1 Land ownership or tenure refers to "the manner in which individual or groups in society hold or have access to land including also the conditions under which such land is held". Several types of land tenure exist. Communal land tenure bestows equal rights of access to land amongst members of a given tribe (community). Membership of a family is the basis of access to land under family control while under feudal tenure access to land is given at the pleasure of the feudal authority. Individual tenure gives exclusive title to hold land to a particular person. Under English/Kenya Law land is held at the pleasure of the state.

3.2 The above forms of land ownership/tenure systems are not mutually exclusive.

### Traditional Land Ownership System

3.3 The Miji Kenda, the dominant African tribe of the coast, initially settled by the seashore. They were gradually pushed further inland to pave the way for Arab settlements. The term Miji Kenda describes the settlement pattern,

which was based on the nine sub tribes of the people. They settled in nine fortress villages, KAYA, one for each of their tribes (GOK/Gedion Were 1988). Inside the fortified village, which were located in forests with only one exit, crop farming thrived.

- 3.4 The Miji Kenda believed that the earth was their mother and she was fertilized with rain by a supreme being. All members were her children and had equal rights to her. A stranger could only use the earth at the pleasure of the elders. All members were entitled to cultivate vacant land provided that no one else was tilling the land at the same time. A man who died tilling the land would leave it for the benefit of his children. Land outside the Kaya was used for cattle grazing and hunting. Everyone was equally entitled to benefit from it.
- 3.5 Thus the Miji Kenda practiced a blend of communal ownership with recognition of individual title to cultivated land.
- 3.6 The Arabs who pushed the Miji Kenda away from the seashore were predominantly Muslims. Islam recognizes individual tenure to farmland and land in trading centres; pasture, forests and water points are the properties of the community (Ummah) and are sustained from the bounties of God.
- 3.7 Secular Land Ownership

In a developing economy such as Kenya where agriculture is the mainstay of the economy, land is a most valuable asset. Owing to the historical development of land laws and land reform there are three categories of land in Kenya today.

1. Government Land:

This is land owned by the government of Kenya and includes land set aside for public use and forest reserves outside trust land. There is no provision for allocating such land unless the use it was set aside for is no longer a priority. Even then, it can only be availed for development if it has been planned in accordance with the Land Planning acts. Such land is administered under the Government Lands Act Cap 280 if it is registered under the Registered Lands Act Cap 300 and the Registration of Titles Act Cap 281.

The Commissioner of lands is authorised to act for the Government in dealing with such land. The President can also exercise his discretion to allocate such land.

## 2. Trust Land

Formerly known as the Native Reserves the land is held by the County Council on behalf of the people who are ordinarily resident there. Customary land rights are of application here. The relevant Act is Cap 288 (The Trust Land Act).

## 3. Private Land

Persons, legal or real, may hold leasehold or freehold interests in land at the pleasure of the state which can compulsorily acquire the land under the Land Acquisition Act Cap 294 and fully compensate them in accordance with the provisions of the Act.

3.8 From the foregoing, three systems of land tenure exist in Kenya today. These are:-

1. Customary tenure : This is of application to Trust lands under the jurisdiction of the County Councils except for parcels alienated to individuals.

2. Freehold Tenure : Absolute title is granted to individuals by the Government. Such individuals do not pay land rents once the title is registered.

3. Leasehold Tenure : Leaseholds are granted by the Government, county councils or individuals with freehold titles to land, for definite periods but subject to land rents, special conditions or covenants.

### The Mazrui Lands Act.

3.9 The Mazrui were at one time the ruling elite in Mombasa and by extension the coast of Kenya. They alongside other Arab families owned large tracts of land in Mombasa, Kwale and Kilifi areas. Other wealthy land owners include the Busaidi family, other Omani families and Swaleh Nguru.

3.10 In 1931, the authorities registered a trust of 2,716 acres in Kilifi for the benefit of the Mazrui. Fittingly, the colonial administration passed the Mazrui Lands Ordinance. This latter became the Mazrui Lands Act which was repealed in 1989. The Standard Newspaper (16th January 1990) reported that hardly a month after the repeal, there was an influx of new squatters, illegal grabbing of the land, selling of plots to outsiders and quarrying of coral blocks and murram. No compensation was paid to the trust beneficiaries.

#### Conservation of Historical Sites

3.11 The Government is empowered to interfere in the utilisation and management of land by a number of statutes. These include : -

1. The Agriculture Act (1955)

Guided by the principle that the farmer should act in his own best interest and in the interest of the nation, the Government is empowered to repossess, re-allocate or manage any farms that are neglected, mismanaged or abandoned.

2. Land Planning Act (1968)

The objective here is to facilitate supervision, control or regulation of non agricultural development of rural land. It applies to

- land within 5 miles from boundaries of urban centres
- land within 400 feet from the centre line of major trunk roads
- subdivision of farms which are less than 8 hectares

3. Land Control Act Cap 302 (1967)

Enforced by Divisional Land Boards, the Act regulates transactions in all agricultural property or property outside urban areas.

3.12 Quite apart from the above there are about 40 other statutes besides by-laws of various organs of government to regulate land matters in Kenya. Government endeavour to preserve historical sites has seen whole sections of Mombasa and Lamu declared as national monuments under the Monuments and Antiquities Act, somewhat to the inconvenience of residents.



- 3.13 To replace a broken door or cracked timber staircase one has to seek approval of the museums officials. In any case, one has to replace the parts as they were. This is not to mention the fact that owners cannot demolish the rundown buildings and rebuild better ones to accommodate their growing families. This means that whole families from grandparents to their grandchildren huddle in dilapidated 15th century structures for the sake of future posterity and gains from tourism to the national economy.

Executive Powers to Allocate Land

- 3.14 The Government through the Commissioner of lands can allocate land that is not immediately required for public utilities. The Government can also allocate land that is required for development or use that is in the national interest. The procedure for such allocation is to prepare a physical plan of the same and offer the lands to the highest bidder at an auction which should be publicised well in advance.
- 3.15 Various categories of land are exempted from this procedure but the Commissioner is expected to put the public interest first in exercising such discretion.

#### 4.0 FORMS OF LAND CONFLICT

- 4.1 Land conflicts in Coast Province involve a number of issues, chief among which are ownership, land use, exploitation, environmental degradation, land for public purposes, religion and expatriate/foreign investor aggression. Numerous cases under each heading could be cited, but only a few examples will be presented below for illustration purposes.
- 4.2 Ownership disputes arise from multiple allocations by the land allocation authorities, disputed boundaries, and conflicts between customary and statutory tenure. A hotelier on Wasini Island, who also happens to be an indigene, recently found his title revoked after a long inter-clan battle which ended up in the courts. The land reverted to its "original" owner whose family had held the property for generations, even before adjudication. Disputes between long-standing "squatters" and new allottees are also common. About 3000 squatters in Miritini are threatened with homelessness after their 200 acre farm was allocated to government officials. The land has three graveyards. The allottees have started demarcating their newly acquired plots but they are meeting fierce resistance from the squatters. The government has promised to resettle the squatters.
- 4.3 Land use conflicts are often related to ownership conflicts in that land changes hands, either legally or otherwise, and the new owner starts to use or develop the site for a purpose which is incompatible or incinical to ongoing activities in the surrounding area. In Lamu the town's water catchment area was allocated to two companies, prompting fears of water pollution. The area is gazetted as a water catchment area in Kenya Gazette Notice 606 of 23/4/1993 under its Water Act (Cap 372). The DC has intervened. in Mombasa the council created and allocated a plot (MSA/BLOCK XIX/220) out of a road reserve, blocking access to an existing commercial property. The owner of the latter has applied for a restraint order; the outcome is not known.
- 4.4 Exploitation refers to the general perception among the poor and even not-so-poor that the livelihood of the many is being sacrificed for the gain of the few. Because of the manner in which the media sensationalise land grabbing cases, the ensuing resentment is especially directed towards politicians and some prominent businessmen. The sale of a farm in Kwale to

a hotel caused a lot of bitterness and even violence, since it displaced many local families. In another case 300 squatters in Diani have sued the AG and five private developers over a piece of land which has been in dispute for four decades. The land, consisting of two parcels with a total area of 2269 acres, was allegedly bequeathed to the local Digo community when the lease expired in 1958. It probably reverted to the state, whatever that would mean in real terms.

- 4.5 The proposal to convert the Tana River Delta into a private prawn farm was vehemently opposed by local residents, including leaders and politicians. There were also protests from leading conservationists. A detailed commentary will be presented as an annexe to this paper.
- 4.6 Environmental conflicts are first perceived by conservationists and other experts interested in the conservation of (a) the natural environment (forests, wetlands, ocean resources, pastures, nature reserves and so on) and (b) the built environment, especially historic towns and monuments. As it happens the province is richly endowed with both types of assets while the threats are high due to relatively low educational levels, lax administration and high potential for making quick gains from tourism and leisure-related development. The Tana River Delta case has already been mentioned. At the other southern extremity of the region, Kwale DC is under pressure to probe and revoke the allocation of forest reserves like Baraza Park, Msambweni mangrove forest, and forests on Funzi and Bodo Islands. Uncontrolled exploitation, the residents fear, could lead to ecological disasters. The forests also contain sacred places and shrines.
- 4.7 Cultural monuments like cemeteries are also under threat, with severe social repercussions. A Muslim cemetery in Malindi has been the subject of municipal council debate as well as press articles. In Mombasa Old Town and Lamu Town - both gazetted as monuments - the authorities are trying their best to conserve the architectural heritage, but to the local residents this is an unnecessary imposition since they are prevented from extending and modernising their houses using modern materials.
- 4.8 Public facilities and their expansion consume a lot of land. Population growth and urbanisation mean that even more and more schools, health centres, police stations, open spaces, roads and water treatment plants must be provided. As state land inventories dwindle and funds become scarce, government becomes less able to find the land. It is therefore even more

disheartening to locals when existing facilities are given away to developers. Malindi's Stadium, Mombasa's Mama Ngina Drive and Uhuru Gardens are only some of the public facilities which have been threatened by dubious allocations.

- 4.9 Religion - induced conflicts relate to cemeteries, traditional shrines and mosque property. Again Diani features prominently here. The case of the hotelier who wishes to incorporate an ancient mosque and surrounding land (21 acres) into his proposed golf-course has received much attention. A court injunction in favour of the mosque users backed by the Islamic community and leading Islamic scholars on the Coast is reportedly being ignored by the hotelier. The plan is to demolish the mosque. The question is whether sentiment, dogma and culture can stand up to capital. In Malindi, apart from the cemetery, there is another interesting case of the owner of a Swahili house next to a mosque who sold it to an Italian, not realising that the Italian, would demolish the house and build a restaurant and bar. This caused a great deal of resentment and bitterness in the local community, who tried but could not stop the Italian. And in Lamu a prominent hotel on the promenade has been bought by a Mombasa businessman who wants to banish the sale of alcohol in that part of the island.
- 4.10 These seemingly minor ripples represent a much larger current which is the source of resentment and among Muslims. They feel that their grievances are not being adequately addressed. The feelings are aggravated by the readiness of the district administration to license open-air public meetings and "crusades" - itself a loaded and emotionally charged word - by Christian evangelists while hesitating to give similar permits to visiting Muslim preachers. Public open spaces and parks, the Muslims argue, should serve all sections of the community.
- 4.11 Expatriate and Foreign Investors. Although the Land Control Act prescribes the sale of farm land to foreigners, we still find a large number of farms in Kwale and Kilifi passing in to the hands of Europeans. This is only a minor source of conflict, since the farms are well looked after and local people get jobs. In fact the locals feel more threatened by massive land acquisition by Kenyans from other parts of the country. The reasons could be more cultural than economic.

4.12 Settlement schemes which exclude the local people are particularly objects of strong resentment. The Lake Kenyatta scheme in Lamu District not only changed the name of a lake but the physical, cultural and economic landscape of a whole region. To the people of Lamu it presents a unique reality which they find hard to understand and confront.

## 5.0 ATTEMPTS AT REDRESS

5.1 The land conflicts in the Coast are largely unresolved because most of them have a long history. However, afflicted persons resort to remedies or have responded to land conflicts in many ways:-

### 1. Court Action

5.2 The High Court in Mombasa has had to deal with lots of land cases including ownership disputes, squatters versus registered landowners, disputes between neighbours which concerns land use and individuals versus the government.

a) Mr. X is the owner of a commercial property at the junction of Foundary and Likoni Roads in Mombasa Mainland South. Mr. Y is allocated the road reserve and in the process fences off the access to Mr. X's property. Mr. X has filed an injunction in court to stop the Government and the Municipal Council from allocating the land to Mr. Y and prohibit the two from granting Mr. Y a change of user.

RULING : Temporary injunction granted

b) Mr. Tall is the owner of a residential plot in Nyali and has started developing maisonettes on it. His neighbour Mr. Short objects to the development arguing that the same will overload the existing amenities (water, power and sewerage). Further, Mr. Tall is a Muslim and wants to build a mosque that will be used by other faithfuls besides himself. Short thinks that the call to prayer made by Muslims will interfere with his sleep and privacy. No verdict yet.

c) About 300 squatters in the south coast have been living on a farm for the last 38 years. They settled on the land when the previous owner's leasehold interest expired in 1958. The previous owner, a white man, had given it to them, the Digo. The Government however, had refused to give

them titles. Recently five developers appeared with titles. The case is being heard by the Mombasa High Court on a priority basis.

## 2. Administrative Intervention

5.3 Appeals to the government and provincial administration have resolved a few land conflicts.

Examples :

a) The Government allocated the Kwale Baraza Park and mangrove forests in Msambweni to private developers. At the same time, the Athi River Mining Company was said to be operating in a manner that was environmentally hazardous.

The residents asked the President through the PC to take appropriate steps to avert an ecological disaster. Some of the forests house shrines of worship.

Action taken : The allocation was revoked. The mining company was threatened with closure if it does not tidy up its act.

b) Hotel Leisure in Diani, Kwale wanted to convert a 21 acre mosque plot (Masjid Jihad) into a golf course. The hotel intended to demolish the mosque. Muslim protest was widespread and well publicised.

Action taken : The DC stopped the intended demolition.

c) Lamu Town :

The town's water reserve was allocated to two companies last year prompting fears of water pollution. The DC who described the reserve as the town's lifeline promised to revoke the allocation if confirmed. The reserve is registered as a water catchment area under Kenya Gazette Notice No. 606 of the Water Act (23/4/93).

d) Tana Delta Wetlands Reserve

This was gazetted as a natural wetland reserve. However, a private company Ranch Limited, had it allocated to them. They intended to sublease part of it for prawn farming. This drew protests worldwide.

Action taken : The President revoked their title.

### 3. Majimbo or Federal Government

- 5.4 Most of the land conflicts are presumed by coastal people to be occasioned by the greed of upcountry people. Some Coastal leaders, favour a Majimbo system of Government to address the coastal and matters. This has been rejected by the country's ruling party.

### 4. Community Resistance to Land Grabbing

- 5.5 On numerous occasions, the people have taken rudimentary arms like stones and machetes to scare away grabbers who appear out of the blue to start demarcating parts of their villages, school playing grounds, mosque parking lots and road reserves. Countless are the number of those who hold titles to coastal land that they dare not set a foot on.