Rethinking Emerging Land Markets in Rapidly Growing Southern African Cities

Shared Experiences from the Eastern African Cities

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Paul M. Syagga, PhD
Department of Real Estate and Construction Management
University of Nairobi
1. Urbanisation in Eastern Africa cities

- Urbanisation in Eastern Africa is characterised by concentration of population in the primate cities and is more pronounced in the cities of smaller countries where primate cities account for higher proportions of total national urban population namely, Djibouti (86.1%), Asmara (64%), Kigali (48.6%) and Mogadishu (46.2%).

- Even in the larger countries the primate cities dominate the share of urban population (Kampala 39.5%, Nairobi (32%), Dar-es-Salaam 29% and Addis Ababa 22.5%).

- The cities in the region are also marked by high concentration of informal settlements as observed in the cases of Nairobi (30%), Kampala (49.3%), Kigali (52.9%), Dar-es-Salaam (64.9%) and Addis Ababa (69.1%).

- In Nairobi the informal settlements are found within city boundaries.
- In other cities the informal settlements have largely grown in the peri-urban areas where surrounding farm lands have been incorporated into the city structure without planning as in the case of AddisAbaba, Asmara and Dar-es-Salaam.
- This urbanization phenomenon in Eastern Africa as elsewhere presents special challenges requiring systematic local planning, provision of infrastructure and shelter as well as delivery of requisite urban services in order to improve the welfare of the urban citizenry, particularly the poor.
- It is in part a result of the nature of the urban land market in the Eastern Africa cities.
2. What is urban land market?

- Conceptually a market is any mechanism that allows the allocation of goods among competing claims through balancing demand against supply.
- A land market is therefore a framework in which those seeking land, and those owning or controlling land, are brought into transaction in order to effect access to land by the land seekers.
- A well functioning land market should have ease of entry and ease of performing transactions. These depend on adequate land information and an appropriate registration and recording mechanisms, among other things.
- Thus for a land market to work efficiently there should be among other things, free flow of information about transactions. These are invariably impeded by the forms of land tenure/ownership, as well as roles played by the many actors in the land market.
3. Forms of land tenure rights in Eastern Africa

- The countries in Eastern Africa run a dual land tenure system that combines both the communal customary tenure and the statutory system of title registration. This is a result of the history of colonialism that introduced the statutory system largely in the urban centres and the commercial farming areas, while leaving the native areas to continue their traditional communal tenure systems.
- Kenya, for instance, inherited a dual land tenure system based on principles of English property law applying to high potential agricultural land and the cities, and a largely neglected regime of customary property law in the so-called marginal arid and semi-arid areas.
- Similarly, land tenure in Burundi currently has both customary and modern systems operating concurrently, and with some overlapping and ‘hybrid’ arrangements in place. In Eritrea, property rights are governed by contemporary state laws and customary laws.
3. Forms of land ownership and tenure rights in Eastern Africa contd.

• Under the customary tenure systems “use rights” seem to supersede “ownership” as conceived in the statutory land codes, because in the customary system ownership is synonymous with use rights.

• However, the customary land system that was confined to the marginal lands in the yester years is strongly finding its way and influencing urban informal settlements which import and continue to operate under adapted forms of the customary systems.

• The prevalence of the dual tenure systems in urban areas creates confusion, contradictions, and disconnects of interaction between the tenure systems, making the resolution of land disputes intricate. It creates a problem for an orderly land use planning which relies on statutory tenure.
4. Actors in the urban land market

• The urban land markets have many actors with sometimes diverse and conflicting interests that may facilitate or restrain the land markets (central government, local authorities, political elite, professionals, collective action groups and individual households).

• National and local governments in Eastern Africa influence land markets and access to land in urban areas through allocation of publicly owned land, provision of infrastructure and services, and through the use of regulatory frameworks (planning control, expropriation and fiscal powers).

• These land policy instruments by their operations curtail access to land by the less privileged urban residents.

• The gap between the need for urban land and its availability is matched only by the gaps in official policy, inequality in urban land markets and what the markets fail to deliver.
4. Actors in the urban land market contd.

- In Kenyan cities for instance, obtaining approvals for subdivision and change of user are particularly cumbersome as it involves multiple government institutions. An urban subdivision application may take 29 months from application with the Nairobi City Council until the sub-titles are issued by the Commissioner of Lands. Similarly slow processes apply to change of user and an extension of lease applications, while in Dar-es-Salaam, lengthy procedures and high costs of formal transfers are also the norm.

- In Uganda research revealed forty-nine procedural steps and high cost of tenure regularization for informal settlements in Mbale Municipality, which effectively block the urban poor from converting customary tenure to leasehold tenure. However, the mailo land tenure system in Kampala illustrates a worst scenario of the impact of confused mixed forms of land tenure on urban land market transactions.
4. Actors in the urban land market contd.

- Another common constraint is the plethora of professionals involved in land transactions (lawyers, valuers, surveyors, etc) who all add to costs and delays. One stop shop within the local authority or central government could lessen the procedural time and lower the cost of acquisition.

- In Eastern Africa cities, a host of legal and administrative hurdles hinder proper functioning of the land markets. Most importantly, market information is pitifully scarce.

- This is in part because only a fraction of land transactions are documented and registered. Also, urban inventories mostly do not exist, making it difficult to forecast trends in future demand for land.
4. Actors in the urban land market contd.

- In practice, where formal land delivery systems fail or fall short, the market will find a way to satisfy demand. Failure of land reform to deliver affordable urban land in a timely manner and in sufficient quantities for predominantly low-income households will therefore inevitably create informal land markets.
- Informal markets help overcome formal markets’ inability to timely deliver on the huge demand for affordable urban plots, irrespective of the prevailing land tenure system in the country.
- The Eastern Africa experience shows that informal land market operations fill significant governance voids.
5. Types of land markets

- Both the existence of dual systems of tenure and the many actors and lack of a common purpose among the actors give rise to multiple systems of access to land in Eastern Africa cities namely:

  a) a formal land market based on regulated procedures and processes (land use planning, surveying and title registration)

  b) informal land transactions in the informal settlements and urban slums that invariably do not conform to the requirements of the regulated land management systems, and characterised by the following features:

    i) private agreements between the contracting parties,

    ii) secretive dealings within closed circles;

    iii) the land is neither planned nor surveyed, and

    iv) the transactions are not recorded in the land registry.
5. Types of land markets contd.

- In place of regulated procedures and processes the informal land markets in the Eastern Africa countries follow simple procedures namely:
  
a) Simple letters of agreement are witnessed by local administration (*Kebele*, *wazee wa mitaa* (village elders) or chiefs) together with an appropriate number of witnesses chosen by the parties to the transactions.
  
b) The more affluent parties may use the services of an advocate, land broker and/or professional surveyor in the transactions. These are, given the costs, exceptions rather than the rule.
  
c) In many other cases, informal land transactions take place without documentation and rely on social recognition for ownership acknowledgment and security of tenure.
  
d) But in all cases - however informal the system may appear in legal terms - the land transaction processes are structured, guided by communal norms and procedures, and play a major role in overcoming the delivery failure of formal urban land markets.
6. Policy implications for urban land management

• The inability of Eastern Africa governments to supply affordable urban land to disadvantaged urban dwellers is the result of bureaucratic inertia, high costs of administrative procedure, allocation inefficiencies and inappropriate use of public office.

• Most of these can be addressed with comparatively little effort, indicating that the underlying issue is one of lack of political will.

• Formal land market limitations, imperfections and outright failures are a significant cost to society and render the majority urban residents vulnerable and landless.

• Any gap created by malfunctioning state institutions will inevitably be filled by non-state actors deploying legal, semi-legal and illegal means to overcome the governance void.
6. Policy implications contd.

- It is prudent that national and urban decision-makers consider and acknowledge the need to address current highly inequitable urban land access options in the context of distributive justice and sustainable livelihoods for the majority urban population.
- Commonly agreed and respected, grass-roots institutions and procedures allow for highly decentralized access to urban land, with a significant degree of security of tenure, and with speedy redress and arbitration procedures in case of disputes.
- Unlike formal markets, they offer pragmatic, efficient and low-cost procedures that could significantly alter the slum and informal settlement equation in many of the sub-region’s cities.
7. Wayforward

- The vast potential of socially regulated urban land transactions and settlement development is much underestimated and little understood by the public sector. Rather than writing off informal procedure as illegitimate, East Africa nations should consider institutionalizing socially regulated informal land and housing markets.

- Recognizing and institutionalizing community-based land management could reduce burdens on the municipality in a cost-effective manner. It would further allow for decentralized tenure and title registration as the foundation for subsequent pragmatic public sector interventions in terms of informal settlements’ spatial lay-out, minimum allowable plot size, public access and services provision in cooperative partnership with the grass-roots institutions that micro manage socially regulated land transactions.

- This, in turn, requires adaptations to legislation that allows for more pragmatic urban land administration and management approaches.
7. Wayforward contd.

- Urban planning should become more efficient and forward-looking to create more compact city structures with less internal transportation demand, reduced per-unit land costs, more efficient and affordable basic services, and better living environments for all citizens.

- Land information systems should be improved to inform the market and prevent land use manipulation by well-connected individuals and whose actions are all too often to the disadvantage of the urban majorities.

- There need for vastly enlarging municipal administrative boundaries to add public vacant land and assuring future cash for municipalities to utilize land as a revenue source and better control peri-urban developments now beyond their administrative control.
8. Conclusion

• The riddles facing urban land market that disenfranchise the majority urban poor in any city in Africa will need to be sorted out by those in the know such as the audience in this workshop to intervene;
• We must stop being passive observers;
• We must stop being people with a growing feeling of indifference;
• We must stop being simplistic, taking the non-controversial route and hoping that someone will do it for us;
• We must move away from unwillingness or inability to confront and resolve conflicts conclusively;
• We must be part of the solution.

THANK YOU THANK YOU!