

Real Estate Law

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KENYA

Transitioning GLA titles: Avoiding pitfalls



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Transitioning GLA titles: Avoiding pitfalls

Imagine holding what you believe to be a title document, only to be confronted with uncertainty as to its validity and a seemingly straightforward document produces more questions than answers.

In the wake of Kenya's constitutional reform in 2010, Article 68 emerged as a pivotal provision promising to reshape the nation's land laws. Its mandate was clear: Parliament was tasked with the critical mission of revising, consolidating, and rationalising existing land laws while also regulating the intricate process of converting land from one category to another. On the surface, this directive seemed poised to usher in a new era of clarity and coherence in land governance, yet the journey from legislation to implementation has proven to be a nuanced and delicate dance. As we navigate the labyrinth of challenges inherent in this process, it becomes increasingly evident that ignoring these technicalities is a luxury we cannot afford, particularly the intricacies involved in transitioning the repealed Government Lands Act (GLA) titles.

The GLA falls under a category of land management system in which only documents and transactions related to land ownership are recorded as separate entries in a register often referred to as a folio, without the issuance of titles. This contrasts with other systems where an instrument of transfer is recorded, and a title is issued to signify ownership.

Switching GLA titles to a system of issuing titles involves a comprehensive legal and administrative process of amending the relevant laws and regulations (which was done in 2012 and 2017, respectively) and consolidating the chain of deeds in each separate folio into a single certificate of title or certificate of lease and registered in a centralised land register.

The Land Registration Act, 2012 (LRA) provides that if a parcel of land is comprised in a register kept under the GLA, the Registrar is required to take certain actions including examining the title, preparing a register showing all subsisting particulars affecting the parcel, and issuance of a certificate of title or a certificate of lease upon request.

Currently we seem to have two categories of GLA titles: those gazetted for conversion and those pending conversion for one reason or another. Conversion is the process of moving land parcels to the new registration units (or registration sections or blocks) constituted in 2017. Transitioning GLA titles in the first category is straightforward and some landowners have already been issued with certificates of title in connection with converted GLA titles. Regarding the second category, however, we find ourselves in an odd predicament where transfer instruments under the LRA (primarily Form LRA 33) are registered in GLA folios as the latest transaction, and thereafter offered as the proof of ownership.

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CONTINUED

Chambers Global 2024 Results

Real Estate Law

Chambers Global 2017–2024 ranked our Real Estate Law practice in:

Band 1: Real Estate.

John Webber ranked by Chambers Global 2024 in

Band 1: Real Estate.

Muhammad Gattoo ranked by Chambers Global 2024 in

Band 3: Real Estate.



Cliffe Dekker Hofmeyr

Presentation of a transfer instrument such as Form LRA 33 at the land registry should ideally be construed as a formal request by the current landowner for investigation of the particulars capable of registration under the LRA and issuance of a certificate of title or certificate of lease in the prescribed form.

Also developing is a misconception regarding the surrender of “unconverted” GLA titles for direct issuance of sectional titles for multi-dwelling units. Sectional titles should not be processed until the parent title is properly transitioned from the current GLA land regime, which operates under a deeds system of title. The transition should align with the provisions outlined in the LRA.

We must evaluate the legal soundness of this emerging practice of considering a transfer instrument under the LRA as a document confirming ownership of a title governed by the GLA. From a nuanced perspective, it becomes apparent that this practice contradicts the established principles and interpretation of our property laws. Moreover, it risks introducing confusion that could exacerbate the complexities of land regularisation.

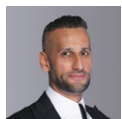
As Kenya moves towards a more efficient land administration system, it is imperative that all stakeholders including government agencies, legal professionals and landowners work together to ensure the effectiveness of the transition process.

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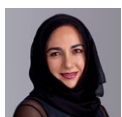
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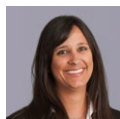
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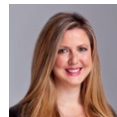
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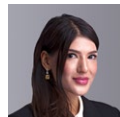
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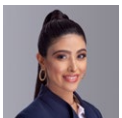
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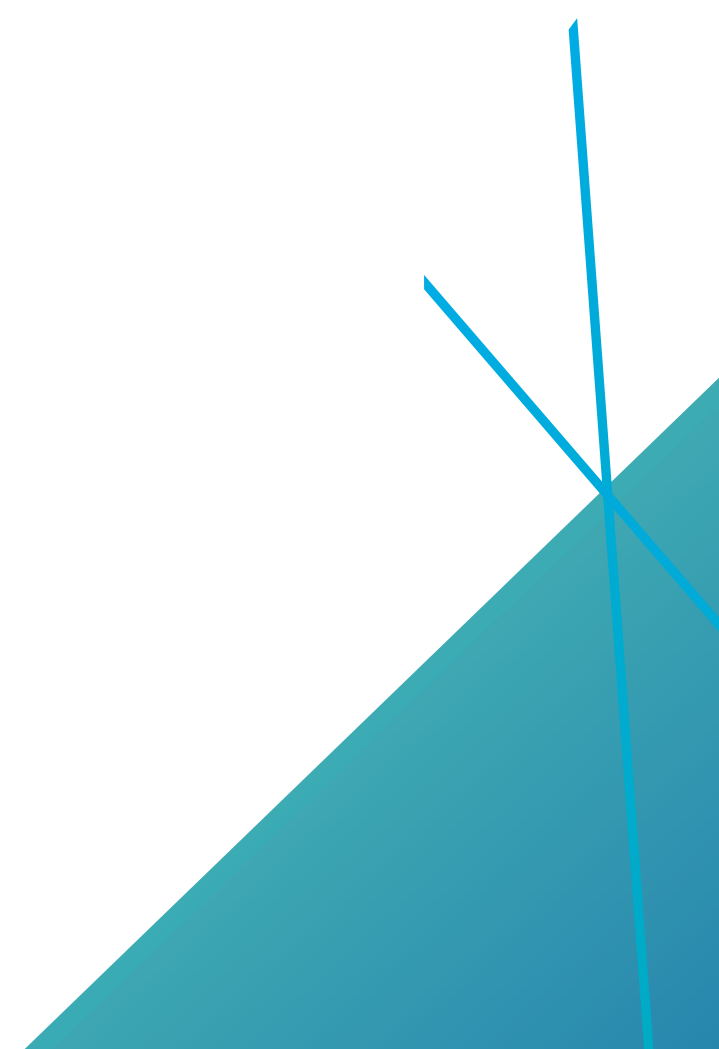
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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