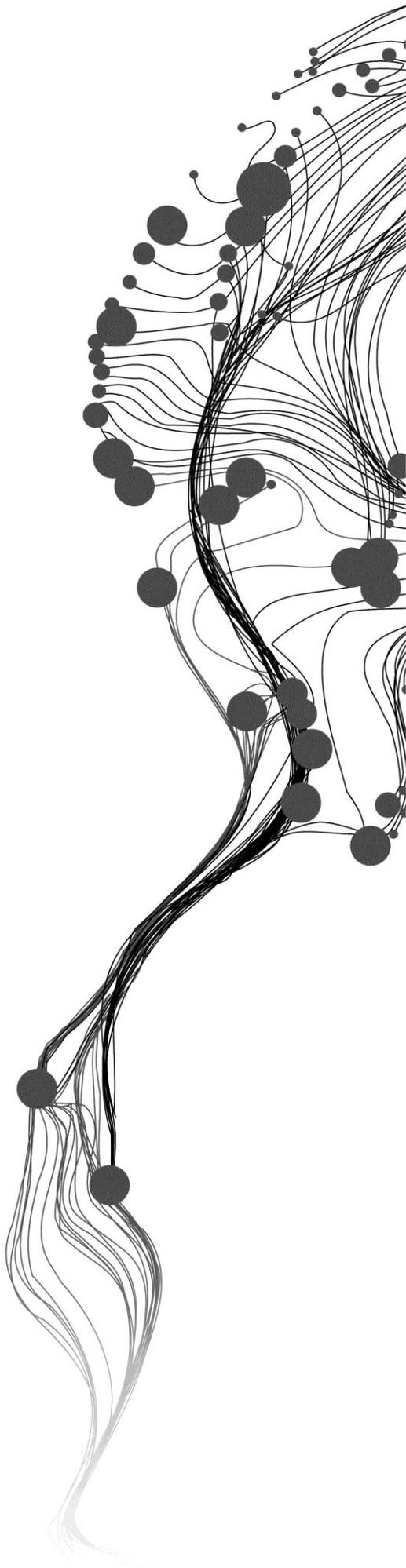


ASSESSING THE EFFECTS OF LAND TENURE ON URBAN DEVELOPMENTS IN KAMPALA

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MARCH, 2013

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ABSTRACT

Kampala exhibits informal urban expansion typical of cities in Sub Saharan Africa. Of note about Kampala's urbanization process is the extent of informality estimated to comprise about 60% of all urban developments. Though there exists a diversity of circumstances and factors that contribute to informal urban developments, this study focused on land tenure considered key in land development because being the rules underlying a people's relation to land, rules of tenure define rights to land, how these rights are accessed and even influence developments put on land depending on the security accorded to land rights. This study assessed the effect rules of tenure have on urban developments in Kampala by examining land access, land subdivision and land development processes (considered the three stages where informality can occur) in the land and property development process.

Qualitative and quantitative methods including key informant interviews, household interviews, literature review, observation, in-depth interviews and case studies were applied in data collection. Research findings show that land in Kampala is held under the Mailo, Leasehold, Freehold and Customary tenure systems with Mailo being the dominant land tenure system and Customary tenure being negligible. A defining characteristic of land holding in Kampala is the separation of land ownership from the ownership of developments on land, designed to accommodate rights of occupants (called Kibanja occupants) who own developments on land under the Mailo and Freehold tenure systems. Rights ascribed to occupants and processes proposed to administer these rights by The Land Act 1998 have never been realised because they are contested by the registered land owners. This emerged as the cause of informal land access under the Mailo and Freehold tenure systems. Informality in land access is perpetuated in land subdivision and land development processes as the KCCA only approves subdivisions and developments on land with formal land ownership documents, in Kampala comprised of land under Leasehold tenure but which constitutes less than 30% of overall land holding.

To address informality in land access, land subdivision and land development processes under the Mailo and Freehold tenure systems, the study identified positive aspects of the current informal structure applied in administering Kibanja rights especially the role played by Local Councils in registering, demarcating and adjudicating Kibanja rights which could form the basis on which the KCCA could build on (through formulation of subdivision and development regulations responsive to Kibanja rights and incremental implementation of planning standards on land under Kibanja occupancy) to achieve planned urban developments in spite of persisting conflicting tenure relations. These proposals made in view of the considerable time and financial resources it would take to resolve the disagreements over occupant registered owner rights as currently constituted and in light of the rising demand for land in Kampala caused by high population growth.

Keywords: land tenure; land access; land subdivision; land development

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LIST OF ACRONYMS

BLB	Buganda Land Board
GLTN	Global Land Tool Network
KCCA	Kampala Capital City Authority Act
KDLB	Kampala District Land Board
LC1	Local Council 1
MoLHUD	Ministry of Lands Housing and Urban Development
NSDFU	National Slum Dwellers Federation of Uganda
STDM	Social Tenure Domain Model
ULC	Uganda Lands Commission
UML	Unified Modelling Language

1. INTRODUCTION

1.1. Introduction

This chapter covers the introductory elements of this research. Subtopics presented are background and justification of the research, problem statement, main research objective, research sub objectives and questions, definition of terms used in the study and a brief outline of the thesis.

1.2. Background and justification

Land is an important resource and one of the key factors of production. It is fundamental in the development of human shelter, agricultural production and economic activities and is a key basis for poverty alleviation and achievement of human rights (UN-Habitat, 2008).

Development pressures on land have however been increasing as a result of rapid population growth and economic development. This pressure is especially high in urban areas which have high population concentrations because of the key role they play as centres for economic production and consumption (Cohen, 2006). Projections made by the UN-World Urbanization Prospectus (2008) indicate a doubling of the world population by 2050, with an anticipated population increase from 3.3 billion people in 2007 to 6.4 billion people in 2050. Majority of this growth is expected to take place in urban areas in developing countries whose population was projected to increase from 2.4 billion people in 2007 to 5.3 billion in 2050. The UN-Habitat (2008) projected a tripling of urban built-up areas in developing countries from 200,000 Sq Km to 600,000 Sq Km by 2030. This rapid growth has exceeded capacities of most cities in developing nations to plan for the increased populations. Cities are thus characterised by poor access to shelter, tenure insecurity, overcrowding and environmental health problems (Cohen, 2006).

Urban growth in Kampala has followed the above trajectory. The city has experienced expansion in its urban area increasing from an area of 8 Sq Km in 1962 to the current area of 800 Sq Km which extends beyond the delineated city boundary to include surrounding towns (Vermeiren, Van Rompaey, Loopmans, Serwajja, & Mukwaya, 2012). This expansion is mainly driven by population growth. Being the capital city of Uganda, Kampala absorbs 40% of the national urban population and has an annual growth rate of 5.61% (UBOS, 2002). Population in Kampala has grown faster than the pace of planning thus the urban expansion process has resulted in unplanned settlements with inadequate infrastructure and services (Mukwaya, Sengendo, & Lwasa, 2010). UN-Habitat (2007) estimates indicate that about 60% of the population in Kampala lives in informal settlements.

Access to land precedes development. Access to land is governed through land tenure systems which are “rules invented by societies that define how individuals and groups access rights to use, control or transfer land and the associated responsibilities and restraints” (FAO, 2002b, p. 7). Though land tenure is an instrument for facilitating access to land it has a direct effect on development which arises out of perception of security of intended investments on land by occupants (Olima & Obala, 1998). This view is supported by Lall, Freire, Yuen, Rajack, and Helluin (2009, p. 102) who argue that “the nature and content of land rights, the extent to which people have confidence that land rights will be honored and the

various degrees of recognition of these rights by public authorities and concerned communities have direct impact on how land is used”.

Systems of administering land rights in many developing nations have proved ineffective in providing efficient means through which growing urban populations can legally access land resulting in informal settlements (Sliuzas, 2004). Though illegal tenure results in informality, studies have shown that it is not the only cause of informal development. Farvacque and McAuslan (1992, p. 39) highlighted “shades of informality” ranging from “defective tenure conveyed by an original landowner to a subdivider, defective tenure conveyed from a subdivider to a purchaser, establishment of subdivision in an area in which it is not a permitted land use, failure of a subdivider to follow applicable subdivision regulations and failure of land purchasers to follow building and occupancy codes when putting up buildings on their land”. Postiou and Ioannidis (2006) in their study on informal settlements in Greece grouped this range of informality in to three categories; informal developments occurring as a result of unauthorized occupation of land, informality occurring as a result of unauthorized subdivision on legally owned land and informality occurring as a result of buildings put up in contravention to planning regulations. The above findings indicate the need for an assessment of informal developments that goes beyond the process of accessing land to include the processes of subdividing and developing land.

Land access, land subdivision and land development processes are however implemented by actors. This research will therefore examine the roles, interests, strategies and interactions of actors in land access, land subdivision and land development processes under different land tenure systems to assess their effects on urban developments in Kampala. This approach borrows from methods applied by agency and structure models advanced to explain disparities in the built environment. These models are based on the assumption that (a) The built environment is the output of the land and property development process (b)The land and property development is a complex multi-disciplinary activity comprised of several processes and stages implemented by various actors (Williamson, Enemark, Wallace, & Rajabifard, 2009) (c) To understand disparities in the built environment it is important to “assess the contribution of actors, the significance of events and the complexity of relationships that make development happen”(Adams, 1994, p. 44).

1.3. Research Problem

Research done on urban developments in Kampala shows there is a link between land tenure and physical and spatial characteristics of developments. The UN-Habitat (2007) in their research on the condition of informal settlements in Kampala identified land tenure systems as one of the factors contributing to informal settlements in the city. The report highlighted unclear tenure relations where multiple interests on one piece of land held by different people as a major hindrance to development control.

Research done by the MoLHUD and UNDP (2008) leading to the formulation of the Uganda National Slum Upgrading Strategy and Action Plan also identified complexity of land tenure systems as one of the factors contributing to unplanned settlements in urban areas in Uganda. The plan noted that “not only are tenure systems multiple where they are formal, they also have traces of customary ownership, rules and practices in urban areas” (MoLHUD & UNDP, 2008, p. 21), making development control difficult.

Nkurunziza (2008) investigated informal mechanisms of accessing land in Kamwokya, Mbuya and Busega informal settlements in Kampala. His study focused on behavior patterns of key actors involved in land access from obtaining information on plot availability, land transaction negotiations, setting of parcel

boundaries to registration of rights. Findings of this research showed that informal processes of accessing land in Kampala are not disordered but are regulated by informal rules which draw from existing legal and customary rules.

Although previous research on land tenure and urban developments in Kampala discussed above highlight uncertainty over existing tenure relations as a hindrance land use planning, they do not illustrate how this has led to informal urban developments. This research by examining land access, land subdivision and land development processes under different land tenure systems illuminates the roles, interests, strategies and interactions of actors in these processes providing insight on the stage (land access, land subdivision, and land development) of the land and property development process in which informality occurs. The output of this research would be useful to (a) bodies charged with land management in Kampala (Kampala District Land Board, Buganda Land Board) (b) bodies charged with management of urban developments in Kampala (Kampala Capital City Authority) (c) Civil Society Organizations undertaking various interventions on informal urban developments in Kampala.

1.4. Research Objectives

1.4.1. Main objective

The main objective of this research is to assess the effect of land tenure on urban developments in Kampala.

1.4.2. Sub objectives and questions

To achieve the main objective of the study sub objectives and questions have been formulated as shown below.

Table 1: Research sub objectives and questions

Sub objective 1 To examine the land tenure systems in Kampala	<p>a) What are the land tenure systems in Kampala?</p> <p>b) What rights are defined under the different land tenure systems?</p>
Sub objective 2 To examine the roles and challenges of actors in the land and property development processes under different land tenure systems	<p>a) Who are the actors involved in land access, land subdivision and land development processes under the different land tenure systems?</p> <p>b) What are the roles of actors in land access, land subdivision and land development processes under the different land tenure systems?</p> <p>c) What land tenure related challenges do actors encounter in land access, land subdivision and land development processes?</p>
Sub objective 3 To propose measures which can be taken to improve land and property development processes under the different tenure systems	<p>a) What actions can be taken by actors to improve land access, land subdivision and land development processes under the different land tenure systems?</p> <p>b) What actions can be taken by actors at a higher level to improve land access, land subdivision and land development under the different land tenure systems?</p>

1.5. Definition of terms

Below are brief definitions of the terms land access, land subdivision, land development, land and property development, land and property development processes and urban development as used in this research.

Land access is viewed not just as the right to enter a defined physical property but includes access to rights to land.

Land subdivision is understood as a process encompassing both the partitioning of land into smaller parcels and the alteration of boundaries to amalgamate small pieces of land into one (Wickramasuriya, Chisholm, Puotinen, Gill, & Klepeis, 2011).

Land development is viewed as the process of putting up of buildings on land for various uses.

Land and property development defined as a complex multi-disciplinary activity comprised of several processes and stages implemented by various actors through which built environments are produced (Williamson et al., 2009).

Land and property development processes in this research comprised of land access, land subdivision and land development processes identified as the three stages in which informality can occur.

Urban development is a broad term that covers activities ranging from creation of extensive urban areas to simply putting up new buildings or making extensions to existing buildings (Williamson et al., 2009). In this research urban development taken to mean “the making of any material change in the use of or density of buildings or land or the subdivision of any land or the erection of buildings or carrying out associated building operations”¹ as defined in Section 2 (a) and (b) of the Physical Planning Act 2010.

1.6. Thesis Outline

Chapter one of the thesis presents introduction to the research, background to the study, justification, problem statement, research objectives, sub objectives and questions, definition of key terms and thesis outline.

Chapter two presents background of the study where literatures on key concepts to this study are reviewed. Sub headings covered under literature review are on urban development the link between land tenure and urban developments, land rights, security of tenure, restrictions on land rights and continuum of rights.

Chapter three gives a background to the study area and addresses the location and administrative structure of Kampala, the origin and growth of the city encompassing the history of land ownership and management considered key to understanding the processes being investigated in this study.

Chapter four presents a description of the data collection approach, methods applied in data collection, analysis and presentation, quality control measures adopted and data collection limitations.

¹ Section 2 (a) (b); The Physical Planning Act 2010; (RoU, 2010a, p. 7)

Chapter five presents land tenure systems in Kampala, rights under each land tenure system and a summary of characteristics of land tenure systems in Kampala.

Chapter six presents land access, land subdivision and land development processes under the land tenure systems in Kampala.

Chapter seven presents the effects of land tenure on urban developments in Kampala by discussing case study findings.

Chapter eight presents land tenure related challenges encountered by actors in land access, land subdivision and land development and actions which can be taken by actors and actors at a higher level to address these challenges.

Conclusions and recommendations of the study are presented in chapter nine of this thesis. Conclusions are based on research findings and review of relevant literature.

2. LITERATURE REVIEW

This chapter presents a brief review of the key concepts underlying this research. Concepts reviewed are urban development, the link between land tenure and urban development, land rights, security of tenure, restrictions on land rights and continuum of rights.

2.1. Urban development

Guest (2012) citing Tinsdale (1942) describes cities as areas with large numbers of people living in high concentrations. From the above description Guest (2012, p. 49) defines urbanization as “the process of increasing numbers and concentrations at high densities”. Nsiah-Gyabaah (2005) attribute this concentration of people and activities to social, economic and political factors which underlie changes in land use transforming rural areas to urban patterns of organization and governance.

Urbanization results in changes in land use (from rural to urban) and increase in density of developments to meet shelter, movement, nutrition and income needs of urban residents (Mukoko, 1996). The assertion that “urbanization does not take place in thin air but requires enormous amounts of land” by Dowall and Clarke (1996, p. 15) underscores the importance of availability of land as a precondition for urban growth. This view is upheld by Fekade (2000, p. 127) who maintains that urban growth should be accompanied by the provision of “affordable buildable urban land”. This he argues can be achieved through efficient urban land management. Urban land management is a system made up of actors and activities which interact to produce efficient allocation and use of urban space especially land aimed at guiding and controlling growth of towns and cities to ensure orderly growth and efficient functioning in provision of urban housing, services and facilities (ibid). Tools used in most cities to guide development include “master plans, zoning plans, subdivision plans, planning regulations and building codes” (Dowall & Clarke, 1996, p. 5).

2.2. The link between land tenure and urban development

While the goal of urban land management is to ensure planned growth of urban areas, access to land on which developments take place and on which planning regulations are applied is governed by rules of tenure. Land tenure is a social relationship comprised of rules (legal or customary) set up by societies that regulate how people relate to land (Lall et al., 2009). Dowall and Clarke (1996) identify poor tenure, cadastral and registration systems as one of the factors hindering efficient growth of cities in developing countries. This is affirmed by Fekade (2000, p. 127) who highlights “unreformed tenure relations” as one of the causal factors for insufficient provision of affordable developable land in most cities in sub-Saharan Africa.

2.2.1. Land Rights

FAO (2002a, p. 7) posit that “Land tenure rules define how people access rights to land” and define property as the right that a person exercises over an object. Rights over land are thus referred to as property rights and they define what can be done on land (Dale & McLaughlin, 1999). Land rights are perceived as being either formal or informal. Formal land rights have official government recognition and have their basis on legal rules set up within a county while informal rights do not have government recognition.

Land rights are seldom held by one person, often multiple rights to the same piece of land are held by different people (FAO, 2002b). This view is consistent with the bundle of rights concept which likens land rights to sticks in a bundle. The sticks “vary from time to time in number (representing the number of rights), in thickness (representing the ‘quantum’ of each right) and in length (representing the duration of each right (Simpson, 1984, p. 7). In areas under the common law, freehold is the highest form of land ownership thus freehold land owners hold the complete bundle of rights (Dale & Mclaughlin, 1999). The figure below illustrates the bundle of rights concept.

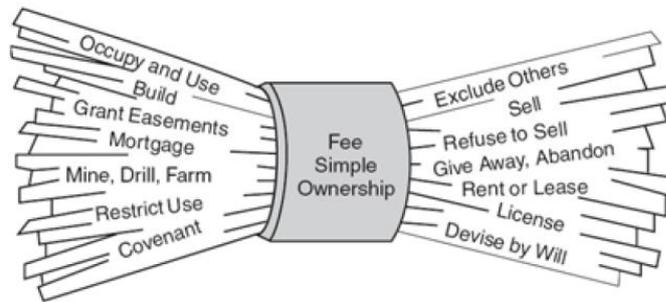


Figure 1: An illustration of the bundle of rights concept (Jacobus 2003)

2.2.2. Security of tenure

“The security that society offers to holders of land rights effects the willingness to make long term investments on land ” (FAO, 2002a, p. 3). “Security of land tenure exists when individuals perceive that they have rights to a piece of land on a continuous basis, that land is free from imposition or interference from outside sources and they have the ability to reap benefits of labour and capital invested in that land either in use or upon transfer to another holder” (van Asperen & Zevenbergen, 2007, p. 3) citing Place et al., 1994. From the above definition van Asperen and Zevenbergen (2007) highlighted breadth, duration and assurance of rights held over land as being key in land tenure security. *Breadth* relates to number of rights held, *duration* relates to extent of validity of rights and *assurance* relates to the confidence with which rights are held (ibid).

2.2.3. Restrictions on land rights

Land tenure does not just cover land rights but also encompasses the restrictions and obligations/responsibilities associated with these rights (Dale & Mclaughlin, 1999; FAO, 2002b; Williamson et al., 2009). Arguments for restrictions on private land rights are associated with the failure of the free market (where the use to which land is put is the sole discretion of owners) to deal with negative externalities arising from private land use and provide public goods (Deiningner, 2003; Wai Chung Lai, 1997). Examples of negative externalities which could arise out of private land use include pollution and conflicting land uses which infringe on land rights of others. They are according to Wai Chung Lai (1997) social costs borne by third parties. Restrictions on private land rights are thus necessary and are applied by governments thorough “planning regulations, planning obligations, development bonuses, environmental performance standards and moratoria to regulate the location, dimension, intensity, time, duration, and process of the production and reception of externalities (Wai Chung Lai, 1997, p. 172)”. Public goods include roads, sewer lines, water lines and open spaces. A defining characteristic of public goods is their joint consumption. Dowall and Clarke (1996) and Wai Chung Lai (1997) posit that because of their joint consumption and inability of the private sector to profitably produce and sell public goods, the free market is unable to provide them necessitating publicly controlled planning.

The figure below illustrates negative externalities on private land use.

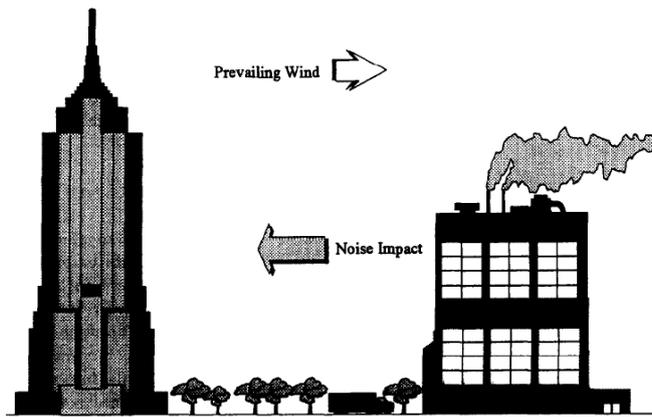


Figure 2: Negative externalities of land use (Wai Chung Lai, 1997)

2.2.4. Continuum of rights

Payne (2007) in his research on urban land tenure in developing nations demonstrated that there is no clear distinction between formal and informal forms of land ownership (land tenure systems) in most urban areas in developing nations rather land ownership varies depending on level of security from formal to informal forming a range or continuum of land tenure categories. He attributed the emergence of tenure sub systems to the failure of conventional land tenure systems to meet land needs of urban populations within the low income bracket creating room for agents who come up with informal mechanisms of accessing and developing land tailored to the needs and income levels of the urban poor. “Each continuum provides different sets of rights, responsibility, degrees of security and enforcement”(UN-Habitat, 2008, p. 8). Consequently, urban developments in developing countries exhibit “varying levels of legality or illegality ranging from squatting; un-authorized subdivisions on legally owned land, illegal construction to varying forms of rental arrangements consistent with the tenure subsystems existing within an area”(Payne, 2001, p. 417). The figure below illustrates the continuum of rights concept.

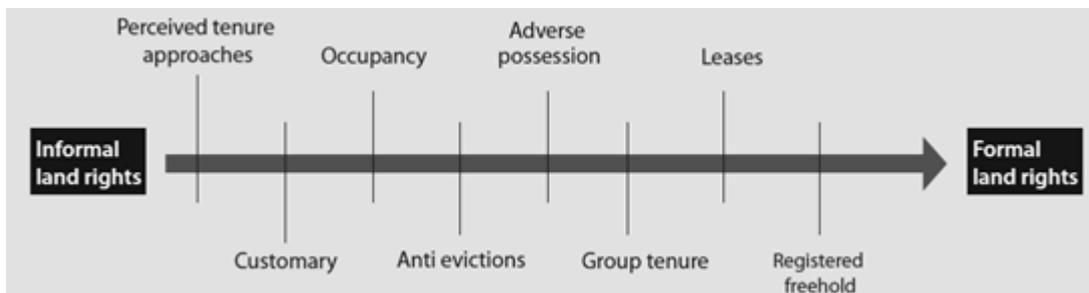


Figure 3: An illustration of the continuum of rights concept (UN-Habitat, 2008)

3. BACKGROUND TO THE STUDY AREA

This chapter presents the location of Kampala, a brief description of the origin and growth of the city and the current administrative structure.

3.1. Location of Kampala

Kampala is located on the northern shores of Lake Victoria at 0 15° 32 30'E (Figure 4). The city has grown from an area covering seven hills in 1962 to the current extent covering twenty four hills. Figure 5 below shows the current boundary of Kampala city.

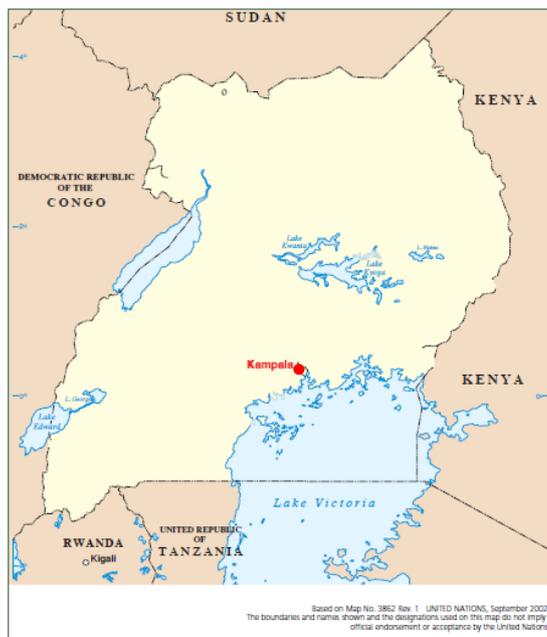


Figure 4: Location of Kampala within the national context (Source UN- Habitat (2009, p. 5)

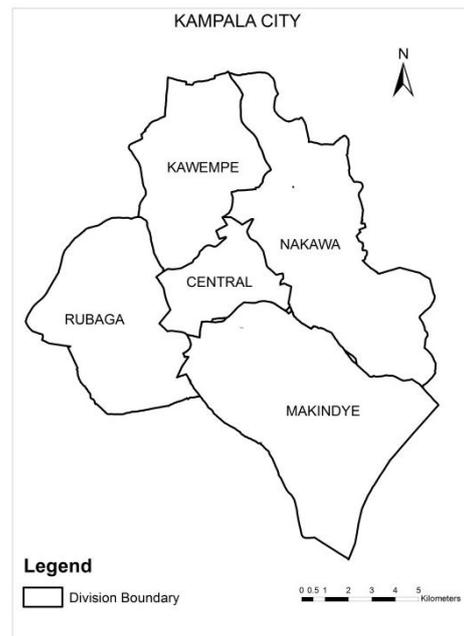


Figure 5: Kampala city

3.2. Origin and growth of Kampala city

There is a close link between land ownership and urban land management in Kampala which can be traced to the origin of the city. Kampala began in the 1600s then serving as the capital (*Kibuga*) of the king (*Kabaka*) of the Buganda Kingdom (Omolo-Okalebo, Haas, Werner, & Sengendo, 2010). The Kibuga was relocated from hill to hill following change in kingship. The last such capital is located at Mengo, having been relocated there in 1884 following the death of Kabaka Mutesa I and succession of Kabaka Mwanga (ibid).

Land in the Buganda Kingdom was owned by the king. Successive kings entered in to agreements which resulted in allocation of land to religious organizations and colonial interests. The Church Missionary society was allocated Namirembe hill in 1884, the White fathers allocated Rubaga hill in 1887, the Mill Hill Fathers allocated Nsambya Hill in 1895, Muslims allocated Kibuli hill while the colonial government through Captain Lugard was allocated old Kampala hill where he built a fort in 1891 (Omolo-Okalebo et al., 2010).

In 1900 the Kabaka signed an agreement with the colonial government which resulted in the reallocation of approximately 19,600 square miles of Buganda land between the king, notables, chiefs, church, and the colonial state (Okuku, 2006). The Kibuga continued as the indigenous capital of the Buganda Kingdom at Mengo hill administered by the kabaka and expanded to accommodate mainly African city immigrants who could not afford high rents (Omolo-Okalebo et al., 2010). Urban developments in the Kibuga were unplanned and had inadequate infrastructure and services (ibid).

The fort set up by Captain Lugard in 1891 grew in to a busy commercial area for Europeans and Asians prompting the relocation of colonial government offices to Nakasero hill (Omolo-Okalebo et al., 2010). The new settlement named “Kampala” was subject to planning schemes including the 1912 plan which covered the old Kampala and Nakasero hills, 1919 Simpsons planning scheme which promoted separation of African and European quarters through use of green spaces, the 1930 plan which resulted in expansion of European and Asian residential areas to Kololo hill and Kitante areas and the 1951 plan which made provision for middle and low income housing for Africans in Naguru and Nakawa areas (ibid). Figure 6 below shows the hills that made up the Kibuga and Kampala Municipality.

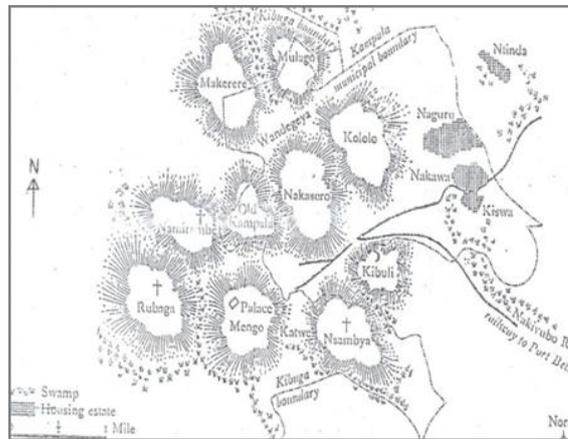


Figure 6: Hills that made up the Kibuga and Kampala Municipality (Source: Van Nostrand (1994))



Figure 7: 2010 orthophoto of Kampala; hills that made up the Kibuga and Kampala Municipality.

(Kibuga and municipal boundaries shown in this image have been retraced by the researcher guided by map of obtained from Van Nostrand (1994) to give a general indication of areas falling under the Kibuga and Kampala Municipality for the purposes of this research and should not be taken as the exact boundaries).

In 1968 the Kampala Municipality boundary was expanded to cover the current extent of the city (approximately 195 Km²) encompassing areas previously falling under the Kibuga bringing the whole town under the management of the Kampala City Council (Omolo-Okalebo et al., 2010). In 1962 Kampala was granted city status by a royal charter (ibid).

Being the administrative and commercial capital of Uganda, Kampala has grown beyond the delineated city boundary to cover an area of approximately 800 Km² (Omolo-Okalebo et al., 2010). Lwasa, Koojo, Mabiriizi, Mukwaya, and Sekimpi (2009) attribute this growth to population increase and economic growth.

3.3. Administrative structure

In 2010 the Ugandan government passed the Kampala Capital City Authority Act which established the Kampala Capital City Authority to administer the Kampala on behalf of the central government. The city's administrative structure as defined under the act is comprised of divisions headed by a mayor and town clerk, the divisions are comprised of parishes with villages / zones being the lowest administrative units. The Kampala Capital City Authority Act 2010 retained the administrative units that existed in the former Kampala City Council. Table 2 below shows administrative structure of Kampala city.

Table 2: Kampala city administrative structure

Division (Local Council 3)	Parish (Local Council 2)	Zone/ Village(Local Council 1)
Central	20	138
Kawempe	22	122
Makindye	22	132
Nakawa	23	279
Rubaga	13	131
Total	100	802

Source: Kampala District Profile 2002

3.4. Conclusion

This chapter presented the origin and growth of Kampala city. From the foregoing, it emerges that land ownership and land management are intertwined with the origin of the city, a consequence of the 1900 agreement which guided division of land between the Buganda Kingdom and the colonial government. A duality in urban land management emerged based on land ownership in which the Kibuga continued to grow under management of the Buganda Kingdom on whose land it fell and Kampala Township on land owned and managed by the colonial government. This chapter provides background understanding on land tenure and urban land management considered key to understanding current tenure relations and land management practices discussed in the subsequent chapters.

4. RESEARCH METHODOLOGY

Qualitative and quantitative methods were applied in collecting the data needed to adequately address the research questions. This chapter presents data collection and analysis methods applied.

4.1. Data collection approach

In light of perspectives drawn at the introduction to this research that the built environment is the result of various processes implemented by various actors pursuing different strategies to achieve their interests, a two pronged approach was adopted in data collection. Data on land tenure systems in Kampala, land access, land subdivision and land development processes, the actors involved in these processes, their roles, the land tenure related challenges they face and measures that can be taken to address these challenges was collected at city level. To gain insight on the effect strategies and interactions of actors have on urban developments, three case areas were selected where land access, land subdivision and land development processes were investigated in detail. The methods applied in collecting data at the two levels are explained below.

4.1.1. City level

Methods applied to collect data at city level are documentary reviews and key informant interviews.

Documentary reviews

Secondary data collection involving mainly review of relevant literature including scholarly articles, reports, Ugandan land laws, policies and strategies was done to gain a preliminary understanding of the research subject, the study area and to supplement primary data collection. Data relevant to sub objective one was collected mainly through literature review. Review of relevant literature also aided in the identification of bodies involved in land access, land subdivision and land development processes under the land tenure systems in Kampala from which information pertinent to this study was sought through key informant interviews.

Key informant interviews

Bodies identified from which key informant interviews were conducted are the Buganda Land Board (BLB), the Kampala District Land Board (KDLB) and the Kampala Capital City Authority (KCCA). The BLB was re-introduced in 1994 by the king of the Baganda to manage land returned to the Buganda Kingdom by Uganda's central government under the Traditional Rulers Restitution of Assets and Properties Act CAP 247 (Okuku, 2006). The BLB issues leases, promotes proper use and development of land, and undertakes registration of tenants and regularization of occupancy on land under its mandate (BLB, 2012)

The KDLB is a body whose establishment, operation and mandate is based on provisions for district land boards made in Sections 57, 60 and 61 of The Land Act 1998 and is responsible for the management of public land within Kampala District. It does this through the issuance of leases, change of use, subdivision and transfer consents. (SIDA, 2002).

KCCA is a body established by the central government (through the Kampala Capital City Act 2010) to administer Kampala city on its behalf. KCCA replaced the former Kampala City Council and has taken over planning (preparation of physical development plans, development control, and approval of

development applications) functions vest in local authorities by Section 11 of the Physical Planning Act 2010.

Key informant interviews were conducted with land management professionals and physical planners at the BLB, KDLB and KCCA. Key informant interviews provided data on the mandate of these bodies regarding land tenure and urban developments and supplemented secondary data that had been gathered on (a) Land tenure systems in Kampala (b) Land access, land subdivision and land development processes under different land tenure systems (c) Land access, Land subdivision and land development challenges encountered by actors (d) Identification of actors at a higher level and (d) Measures that can be taken by actors at a higher level to address the challenges highlighted; data relevant to sub objective 2 and 3 of this study. Because of uniformity of the information sought, key informant interview schedules though similar were amended to reflect the functions of each institution. Appendix 1 attached is a schedule for the key informant interview conducted at the BLB.

An interview was conducted with a knowledgeable independent land expert in Kampala who gave further insights on the influence of land tenure on urban developments in Kampala, land tenure related challenges in access, subdivision and development of land and measures that can be taken to address these challenges. Table 3 below gives a summary of key informants interviewed.

Table 3: Key informants interviewed

Institution	Role of key informant	No of interviews
Buganda Land Board	Physical Planner	1
Kampala District Land Board	Land Officer	1
Kampala Capital City Authority	Physical Planner	1
Nakawa Division Urban Council	Physical Planner	1
Independent land expert	Mr. Eddie Nsamba-Gayiiya (Registered valuation surveyor)	1

To augment data obtained from key informant interviews on measures which can be taken by actors and actors at a higher level to improve land access, land subdivision and land development processes under different land tenure systems (Questions under Sub objective 3) review of various literature on (a) the efficacy of current land legislations in Uganda (b) measures that have been adopted in other parts of the world to achieve planned urban developments in spite of unclear tenure relations was undertaken.

4.1.2. Case level

Due to the large size of the Kampala city (approximately 195 Sq Km), cases were selected where detailed studies on the influence of land tenure on urban developments were done. Yin (1994, p. 23) defines “the case study method as an empirical inquiry that investigates a contemporary phenomenon within its real life context; when boundaries between phenomena and context are not clearly evident; and in which multiple sources of evidence are used”. The method primarily supports the selection of case areas within a wider study area where in-depth contextual analysis of the study is undertaken. It is based on the assumption that selected cases typify sections within the wider study area thus providing a basis for generalization of case study research findings (Kumar, 2005).

Background to case selection

The dual system of land ownership and management which existed in pre-colonial Kampala (Kibuga versus Kampala Municipality) was drawn upon as the first distinction between the three case areas

selected. Other criteria that guided the selection of case study areas are the differences in spatial patterns of urban development based on visual interpretation of 2010 orthophoto of Kampala, literature review on urban developments in Kampala and information gathered during key informant interviews. The three selected case study areas are discussed below.

Case I: Bwaise III Parish

Bwaise III parish is located about 5 kilometres north of Kampala's Central Business District and is accessed via Bombo road which links the area to the northern bypass. The parish is in Kawempe division and is comprised of five zones namely Kalimali, Bukasa, Bugalani, St. Francis, Katoogo and Kawaala Road. One of the early occupants of Bwaise III interviewed places origin of the settlement in the 1920s. Since the settlement is on land owned by the Buganda Kingdom, individuals, subjects of the king (*Baganda*) in need of land would contact the village chief (*Omutongole*) and inform him of the need of an area to settle. The chief would allocate them land and issue them a letter indicating their occupancy. This letter would be used for identification, registration of occupancy and obtaining of development permission at the kingdoms central offices. Bwaise III has since evolved in to a settlement with a population of 15,015 people within a parish boundary measuring approximately 57 Ha (UBOS, 2002).

Bwaise III (a) evolved under different land ownership and management first by the Buganda Kingdom, then the central government following abolition of Kingdoms by the 1967 Uganda constitution, then under the Buganda Kingdom following enactment of the Traditional Rulers Restitution of Assets and Properties Act CAP 247 in 1993 which saw return of public mailo land to the Buganda kingdom (b) evolved on a low lying area; formerly a wet land connected to the Lubigi wetlands and faces a yearly problem of flash floods which disrupt everyday life, cause destruction of property, breakdown of transport and disease outbreaks (c) has been identified as one of the flood prone areas within the Lubigi catchment area where a study on integrated flood management is being done by the UN Habitat in conjunction with KCCA (d) in spite of these problems occupation and development in the area continues necessitating an examination of land access, land subdivision and land development processes in this area.

Case II: Mailo Land access by a real estate company

To illustrate the effect of land tenure on urban developments, the key informant interviewed at the BLB highlighted challenges encountered by one real estate company when acquiring land in Buziga area for residential development. The case was further investigated and forms Case II in this research. The land examined in this case is owned by the Buganda Kingdom, occupies sections of Konge, Kyamula and Katuuso zones and has a mix of high income and low income residential developments.

Case III: Ntinda Parish

Ntinda parish lies about 8 kilometres northeast of Kampala's central business district. Administratively, Ntinda is located in Nakawa division and is comprised of 18 zones. The parish has an area of approximately 263 Ha and a population of 9,094 (UBOS, 2002). Ntinda falls on land formerly owned by the colonial government. Though the parish does not lie within the boundary of the former Kampala Municipality, it falls within the adjacent areas identified for expansion of Kampala Township by the 1951 Kampala plan. It is one of the first planned settlements occupied by Africans and largely evolved after independence first as an estate constructed by the government to house staff of the East African Railways and Harbours, then under private individuals following privatisation which resulted in the issuance of leases to individuals. The map below shows the selected case study areas.

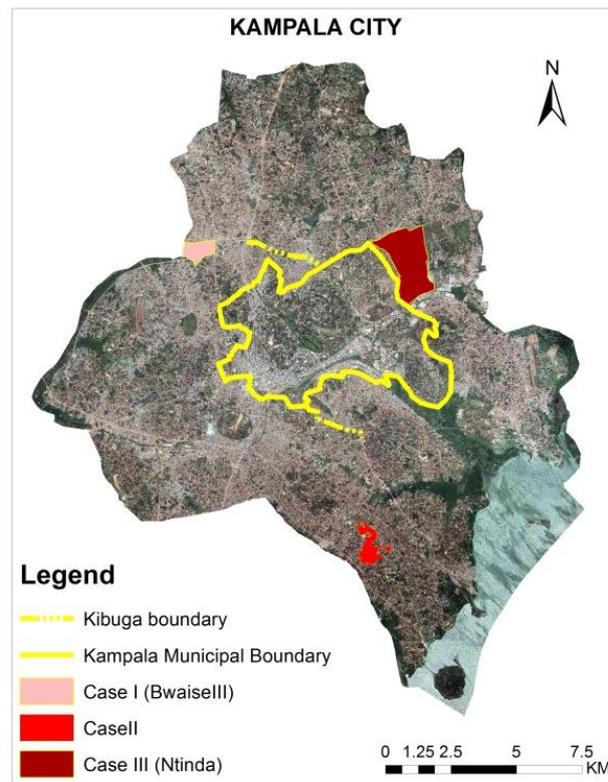


Figure 8: Selected case study areas.

Data collection methods employed within case study areas are discussed below.

Household interviews

House hold questionnaires were applied to collect data on research questions within case study areas. Household questionnaires targeted leaseholders in Ntinda parish and occupants with claims on land in Bwaise III parishes. To assess the appropriateness of the formulated questionnaire in obtaining the information required a sample of ten questionnaires were administered by the researcher in Bwaise III parish. An examination of the sample questionnaires administered showed no great variation in the answers obtained. Based on this observation and the homogeneity of urban developments in the parish a sample of 60 respondents was interviewed. To ensure spread/ distribution of sample points in the parish, the area was divided in to 100 x 100 m grids. Within each grid two houses occupied by occupants with claims to land were to be purposefully selected where interviews would be conducted. Realization of the pre field work sampling strategy was hampered by (a) the nature of house ownership within the parish. In Bwaise III there are houses constructed and occupied by occupants with claims to land and houses constructed by occupants with claims to land (mainly row houses) and rented out. Occupants of rental row houses are tenants of occupants with claims on land who were not the target of the household survey therefore the researcher had to move within each grid to find houses occupied by plot holders (b) because of the informal state of rights of occupants and existing disputes between occupants and registered land owners the information sought by this study on access to land and evidence of occupancy was considered sensitive by some occupants who declined to be interviewed (c) few occupants were sampled in Kawaala Road zone which has few occupants as most of the land is either a wet land or comprises the northern by pass road reserve. This resulted in the distribution of sampled households shown in the map below where some grids have no sampled occupants and others have more than two occupants sampled. The information obtained from the sampled occupants is however representative of land access, land subdivision and land development processes in the parish as there is no diverse difference in occupancy characteristics and urban developments in Bwaise III.

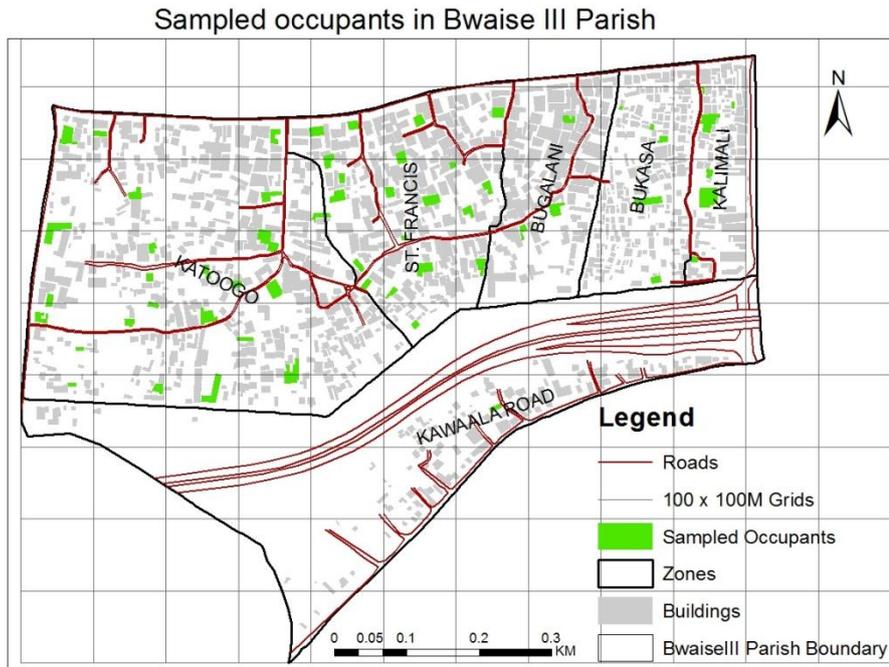


Figure 9: Sampled households in Bwaise III Parish

To address the challenges described above the researcher sought the help of the chairman LC1 Kalimali zone to help in identifying plot holders and giving further clarification on the purpose of the study. Other challenges encountered during data collection are on differences in interpretation of questions by field assistants even after pre fieldwork training. An examination of questionnaires administered by field assistants showed good interpretation of questions however there was variation in understanding of the question on land tenure related challenges encountered by occupants when accessing, subdividing and developing land where general challenges were given. Further clarification of the information sought through this question was done. Appendix 2 annexed is a sample of the household questionnaire administered.

A similar sampling procedure had been outlined for data collection in Ntinda parish. The researcher however encountered difficulties in administering household questionnaires in the area because it is a high income area with gated properties which are not easily accessible. Data that was to be collected using household questionnaires on the origin and growth of Ntinda parish and Land access, Land subdivision and Land development processes applied in the parish was obtained from the physical planner, Nakawa division within whose jurisdiction Ntinda parish lies. The division urban planner is the technical officer charged with implementation of physical development plans, development control, evaluation and recommendation of development applications at the division level.

Review of land records

To obtain information on land access, land subdivision and land development processes pursued by the real estate company presented in Case II and challenges encountered, land records and correspondence between the company and BLB were reviewed. This was supplemented by information obtained from the key informant interview conducted at the BLB. Further information on details of the proposed developments was obtained from the website of the architectural firm contracted to prepare layout plans, architectural plans and topographic survey for the land. Information on the extent of project implementation was obtained from the website of the real estate company.

In-depth interviews

In-depth interviews were conducted with an occupant in St. Francis zone who has is one of the early occupants in Bwaise III and is knowledgeable on the origin and growth of the settlement and the LC1 chairman for Kalimali zone who gave insight on the roles of Local Councils regarding land access, land subdivision and land development processes.

Field observation

Field observation was done thorough a transect survey of the two case areas to gain a better understanding of actual differences in conditions of urban developments. This was aided by 2010 ortho photo of Kampala. Photographs were used to collect data during the transect survey.

4.2. Quality control

The use of multiple sources of data and multiple methods of data collection enabled examination and comparison of findings from different sources therefore bolstering the validity of research findings. Key informant interviews conducted were recorded and transcribed to ensure that responses were presented as obtained during interviews. To ascertain the relevance of the formulated questionnaire in obtaining the information needed from the household survey a sample of 10 questionnaires were administered in Bwaise III. Further training of field assistants was done to avoid misinterpretation of questions.

4.3. Limitations of data collection

Challenges encountered during data collection arise from the structural changes being done to accommodate new legislations on physical planning (The Physical Planning Act 2010) and management of the city (The Kampala Capital City Authority Act 2010), thus some of the bodies identified as potential sources of information before field work like Division Urban Councils did not have some of the targeted technical staff for key informant interviews hence the information needed was obtained from the KCCA central office.

The researcher encountered apprehension when conducting an interview at the Kampala District Land Board because of an existing conflict over the management of public (leasehold) land in Kampala.

4.4. Data analysis

Responses obtained from key informant interviews were transcribed and the questions as set in the interview guide and the additional questions that came up during interviews matched with the responses given. The responses have been incorporated in write ups in subsequent chapters. Data on actors involved in land access, land subdivision and land development processes for land under the tenure systems in Kampala and their roles was extracted and presented using UML activity diagrams in chapter six of this research. Data obtained from household questionnaires was coded and analysed using excel and SPSS and constitutes case study findings presented in chapter 7 of this research.

The figure below gives a diagrammatic summary of the research methodology discussed above.

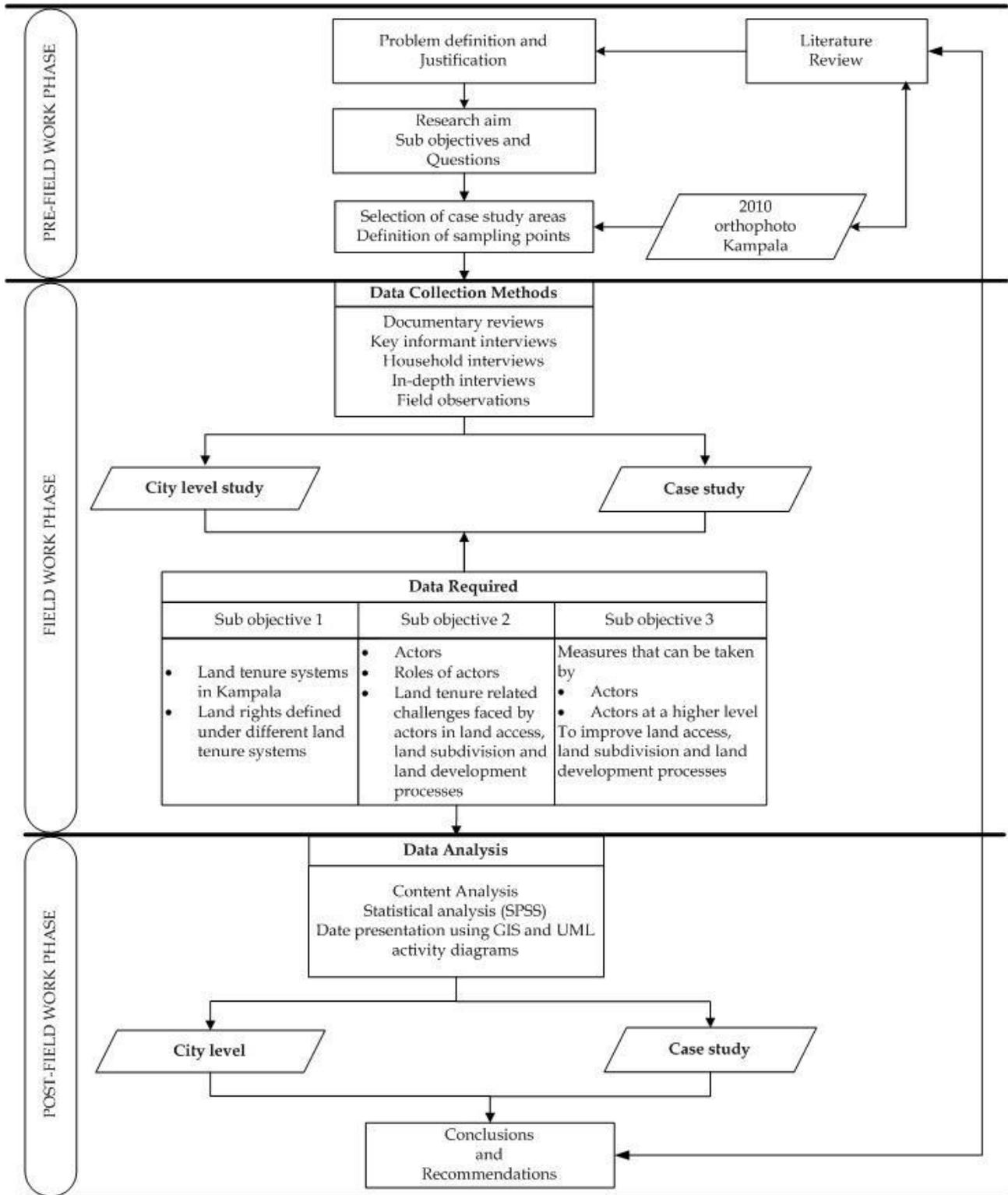


Figure 10: Research design

5. LAND TENURE SYSTEMS IN KAMPALA

This chapter presents a detailed description of land tenure systems in Kampala, land rights under each land tenure system, key actors in each land tenure system and a summary of general observations on the forms of land holding in Kampala.

5.1. Land tenure systems

Land ownership in Kampala is under the Mailo, Leasehold, Freehold and Customary tenure systems (MoLHUD & UNDP, 2008). These are the four tenure systems through which land can be held in Uganda and are stipulated in article 237 of the 1995 constitution of Uganda. These are discussed in detail below.

5.1.1. The Mailo land tenure system

The Mailo land tenure system derives its origins from the 1900 agreement which led to the allocation of land between the Kabaka of the Buganda, notables, chiefs, church and the colonial state (Okuku, 2006). Since its inception the land tenure system has gone through changes guided by various laws enacted by the different Ugandan governments the latest being The Land Act 1998 and The Land Amendment Act 2010.

Land holding under the Mailo tenure system as prescribed by The Land Act 1998 is by registered land (Mailo) owners who own land in perpetuity². The Mailo land tenure system “separates ownership of land from ownership of developments on land by lawful, bonafide and tenants by occupancy”³

A lawful occupant as defined in Section 30 (1) of The Land Act 1998 is “a person occupying land by virtue of (a) the repealed Busuulu and Envujjo law 1928 (b) Toro landlord and tenant law of 1937 (c) Ankole landlord and tenant law of 1937 (d) a person occupying land by consent of registered land owner including purchase (e) a person who had occupied land as a customary tenant whose occupancy was not disclosed or compensated for by the registered owner by the time of acquiring the leasehold certificate of title”⁴.

Section 30 (2) of The Land Act 1998 defines a bonafide occupant as “(a) a person who had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more before enactment of the 1995 Ugandan constitution (b) had been settled on land by government or agent of government which may include a local authority (c) a person who had purchased or acquired interest on land”⁵. Section 4 (c) of The Land Act 1998 grants lawful and bonafide occupants all rights ascribed to owners of land under the freehold land tenure system. These are use rights, rights to enter in to transaction (sell, lease, mortgage, pledge) in connection with land, rights to subdivide land and rights to dispose land⁶.

Tenant by occupancy as defined in section 31 (1) of the Land Act 1998 is “a person who had occupied and utilised or developed land unchallenged by the land owner or an agent of the registered owner for less

² Section 4(4)(a), The Land Act 1998, (RoU, 1998, p. 10)

³ Section 4(4)(b), The Land Act 1998, (RoU, 1998, p. 10)

⁴ Section 30(1), The Land Act 1998, (RoU, 1998, p. 36)

⁵ Section 30(2), The Land Act 1998, (RoU, 1998, p. 36)

⁶ Section 4(2)(b), The Land Act 1998, (RoU, 1998)

than twelve years”⁷. Tenants by occupancy are tenants of the registered land owner according to Section 32(2) of The Land Act 1998 thus pay ground rent to the registered owner. Sections 32-39 of the Land Act 1998 prescribe the procedure for obtaining certificate of occupancy by tenants by occupancy upon which they acquire rights to “use, assign, sublet or pledge, and subdivide land”⁸ subject to consent of the registered land owner. “Tenancy by occupancy is inheritable”⁹.

The figure below summarizes land rights under Mailo land tenure system.

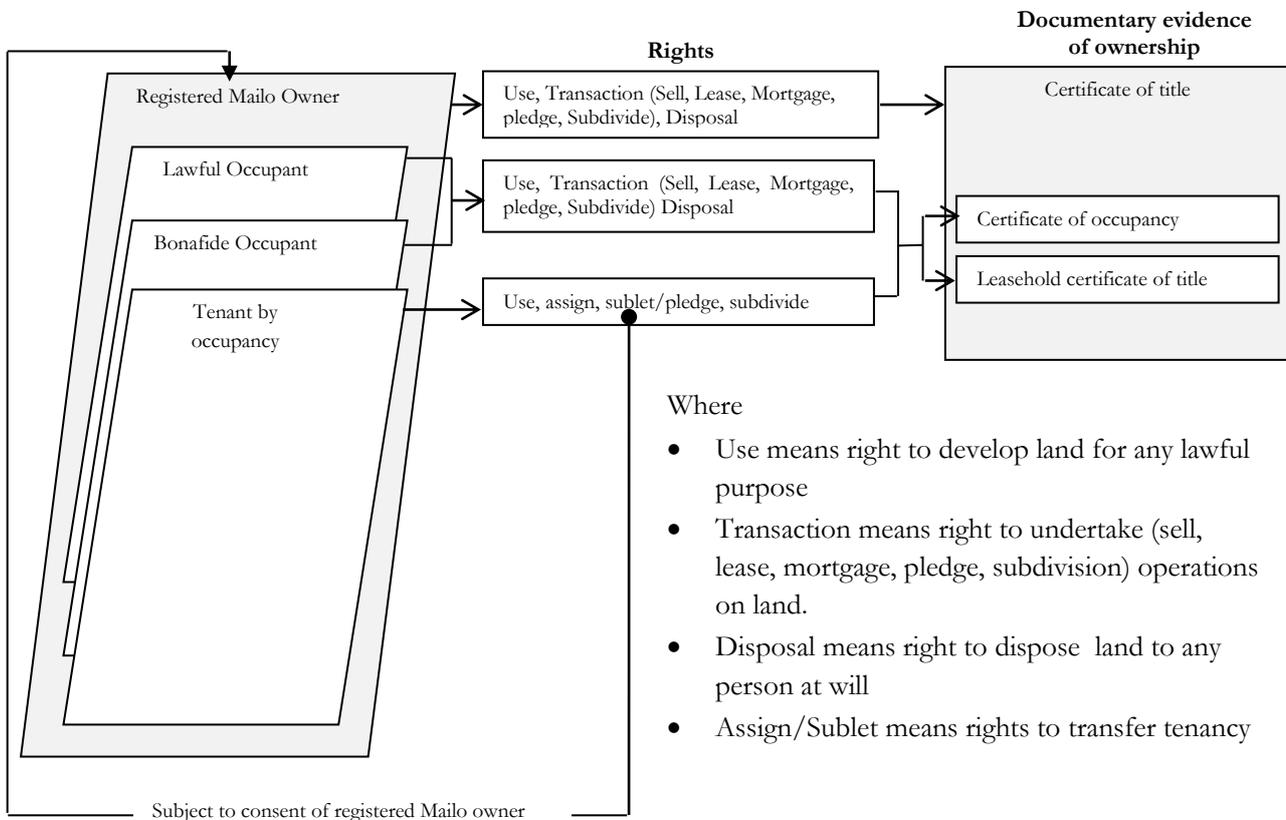


Figure 11: Land rights under the Mailo land tenure system

In Kampala ownership of land under the Mailo tenure system is by private individuals (private Mailo land) and by the Buganda Kingdom (Public Mailo land). Public Mailo land in Kampala is comprised of a section of the 350 Square miles of land returned to the Buganda Kingdom by the central government under The Traditional Ruler’s Restitution of Assets and Properties Act Cap 247 in 1993 and is managed by the Buganda Land Board. Land under the Mailo tenure system is located in Rubaga, Kawempe and Makindye divisions.

5.1.2. The Leasehold land tenure system

Leasehold land tenure system is a form of land ownership “created by a contract or operation of law under which a land lord or lessor grants or is deemed to have granted another person namely tenant or lessee exclusive possession of land usually but not necessarily for a period defined directly or indirectly by

⁷ Section 31(1),The Land Act 1998 (RoU, 1998, p. 37)

⁸ Section 35(1),The Land Act 1998 (RoU, 1998, p. 41)

⁹ Section 35(2) The Land Act 1998(RoU, 1998, p. 41)

reference to a specific date of commencement and a specific date of ending”¹⁰. Leasehold tenure in Kampala is comprised of public land formerly owned by the colonial government whose ownership fell under the Uganda Land Commission (ULC) after independence as prescribed by the 1969 Public Land Act and whose management the commission vest in the Land Board of the Kampala City Council. The land is currently managed by the KDLB as per Section 60 of the Land Act 1998 and the ULC which manages land occupied by government offices, schools, hospitals and missions.

Land holding under leasehold tenure is by individuals who have been leased land by the KDLB and hold leasehold certificate of titles and individuals who occupy the land customarily and can be issued with a certificate of customary ownership. Leaseholders have use, transaction (lease, mortgage, subdivision, sell) and disposal rights subject to consent of the KDLB. Section 29 of The Land Act 1998 provides for the conversion of leasehold land to freehold tenure for leases issued before enactment of the Act and conversion of certificate of customary ownership to free hold certificate of title under Sections 13. The official interviewed at the KDLB however indicated that the board has not issued any certificates of customary ownership yet. Land under leasehold tenure is located mainly in Central and Nakawa divisions. The figure below summarises the rights of land holders under the leasehold land tenure system.

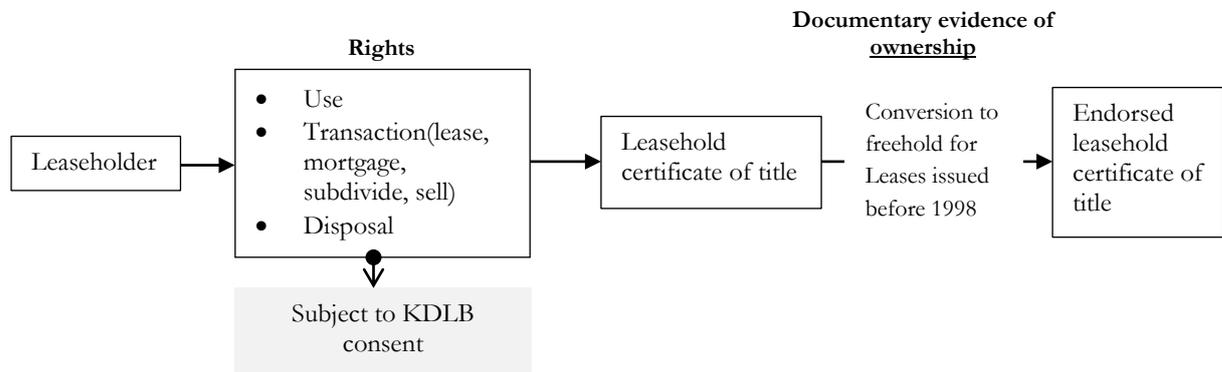


Figure 12: Land rights under the leasehold land tenure system

5.1.3. The Freehold land tenure system

Freehold tenure entails “holding of registered land in perpetuity”¹¹. Rights associated with freehold land ownership as outlined in Section 4 (2)(b) of the Land Act 1998 are use rights, right to derive benefits from land, transaction (sell, lease, mortgage, pledge, subdivision) and disposal rights¹².

Freehold land tenure system in Kampala is comprised of land owned by institutions like churches, schools, mosques and land under leasehold tenure being converted to freehold in accordance with Sections 13 of The Land Act 1998. The figure below illustrates land rights under the freehold land tenure system.

¹⁰ Section 4 (5)(a)(c),The Land Act 1998,(RoU, 1998, p. 11)

¹¹ Section 4,(2)(a),The Land Act 1998,(RoU, 1998, p. 10)

¹² Section 4, (2)(b), The Land Act 1998,(RoU, 1998)

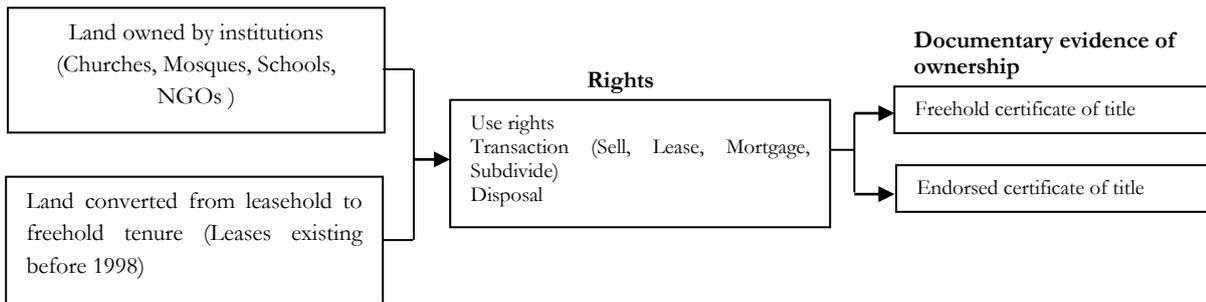


Figure 13: Land rights under the freehold land tenure system

5.1.4. The Customary land tenure system

Customary tenure is described in Section 4(1)(a)(b) of The Land Act 1998 as a form of land tenure “applicable to a specific area, land, description of persons governed by rules accepted as binding to the class of people to which it applies”¹³. SIDA (2002), Okuku (2006) and the Independent land expert interviewed identified customary tenure as the dominant form of land holding in Uganda with exception of land falling in urban areas and under the Buganda Kingdom. Kampala being an urban area located on land previously owned by the Buganda Kingdom has limited if any incidence of customary land tenure. Though previous research on land tenure, informal settlements and urban developments in Kampala by SIDA (2002), MoLHUD and UNDP (2008), UN-Habitat (2007), the independent land expert and key informants interviewed at the KCCA and KDLB all identify customary tenure as one of the land tenure systems in Kampala its existence could not be verified because;

- a. The KDLB which is tasked with regularization of customary occupancy has not issued any certificates of customary occupancy;
- b. In the absence of certificates of occupancy, the researcher did not find any alternate procedures that have been put in place to address land access, land subdivision and land development for land under customary tenure;
- c. Land under customary tenure could not be located spatially during the interview conducted with an official at the KDLB nor from land tenure map (Fig.14) obtained from KCCA GIS unit.

Based on the above observations customary tenure has not been addressed in subsequent discussions in this research.

The map below shows the distribution of land tenure systems in Kampala.

¹³ Section 4 (1)(a)(b),The Land Act 1998(RoU, 1998, p. 9)

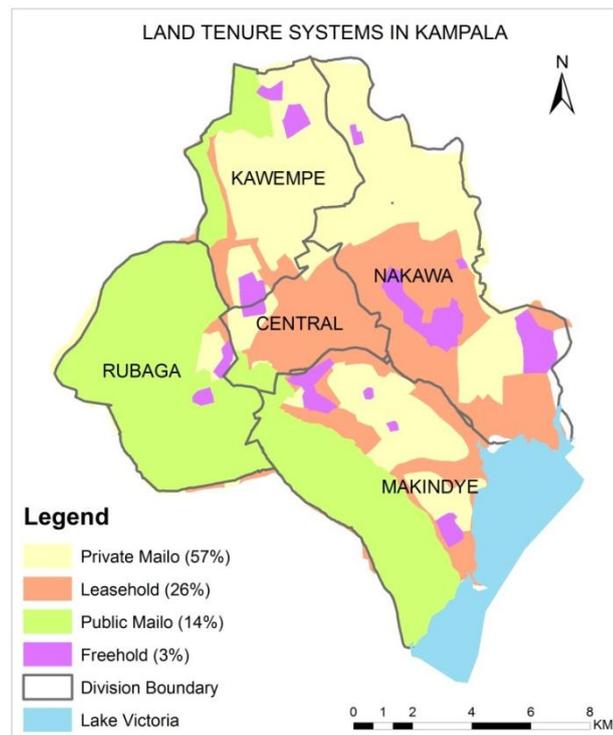


Figure 14: Land tenure systems in Kampala

Source: KCCA GIS unit. (This map gives general indications of land holding under different land tenure systems in Kampala for the purposes of this research)

The table below gives a summary of key characteristics of the land tenure systems described above.

Table 4: Key characteristics of land tenure systems in Kampala

Land tenure systems			
Mailo	Leasehold	Freehold	
1	Dominant land tenure system in Kampala. This also supported by findings of (Giddings, 2009, p. 12) (SIDA, 2002, p. 97; UN-Habitat, 2007, p. 15)	Second largest form of land holding in Kampala.	Least form of land holding in Kampala.
2	Comprised of public Mailo land owned by the Buganda Kingdom and private Mailo land owned by individuals	Comprised of public land owned by the government and managed by KDLB	Comprised of land owned by institutions.(Churches, Schools, NGOs)
3	Land owned in perpetuity	Land leased to private individuals by KDLB	Land owned in perpetuity
4	Separates ownership of land from ownership of developments on land by occupants	Does not separate ownership of land from ownership of developments on land	Does not separate ownership of land from ownership of developments on land
5	Land has highest incidence of occupancy	Land has limited occupancy	Considerable land under occupants

5.2. Key Observations

There are two levels of rights for land under the Mailo tenure systems; rights of the registered land owners (BLB, Private Mailo Owners) and rights held by occupants over developments on small portions of the land (*Kibanja*) registered under the above owners.

Kibanja holders occupy significant portions of land in Kampala. The official interviewed at the BLB indicated that all public Mailo land which constitutes about (14%) of land in Kampala according to (Fig.14) had Kibanja claims when returned to the kingdom in 1993. In order to understand the effect of land tenure on urban developments, it is imperative to examine the origin and evolution of Kibanja occupancy and the laws that have shaped tenure relations between Kibanja occupants and registered land owners.

Kibanja occupancy existed in Buganda before colonialism as peasant (*bakopi*) rights to land. Peasants had occupation and cultivation rights to small portions of land owned by chiefs which they paid for by offering labour to the chiefs (Batungi & Rüther, 2008). The 1900 agreement between the colonial government and the Kabaka of the Buganda formalised kings (*kabaka*) rights, chiefs (*obutongole*) rights, clan (*obutaka*) rights, and hereditary (*obwesengese*) rights to land who became the new Mailo landlords and precluded peasant rights to land who became tenants of the new landlords creating multiple rights to land which have persisted to date (Okuku, 2006).

Though various laws have been enacted overtime to address multiple rights to land, the independent land expert interviewed and Okuku (2006) cite the 1928 *busuulu* and *envujjo* law and the 1975 land reform decree as the legislations that have had significant impact on landlord tenant tenure relations. They maintain that while the 1928 *busuulu* and *envujjo* law improved security of tenants by restricting arbitrary evictions and limiting the rent charged by landlords the 1975 land reform decree by making all land in Uganda public, abolishing all forms of absolute land ownership (Mailo and Freehold land tenure) and abolishing the payment of ground rent increased unauthorised occupation of land which extended to land under Freehold tenure.

The Land Act 1998 is the most recent legislation that addresses landlord tenant relations. The Land Act 1998 grouped tenants into lawful, bonafide, tenant by occupancy and customary occupants based on criteria discussed under subheading 5.1.1 of this report. The Act provides further legislations on landlord tenant relations in Sections 31, 32, 33 and 34 some of which were repealed by the Land Amendment Act 2010. The provisions made in these acts have however not resolved conflicts in landlord tenant relations. The Uganda National Land Policy (2011) and the Independent land expert interviewed attribute this to controversies over (a) rights accorded to bonafide occupants (b) provisions on eviction of occupants and (c) provisions on ground rent prescribed by The Land Act 1998. This coupled with failure by the government to put up land tribunals, land committees and mediators proposed by The Land Act 1998 to aid in regularization of occupancy have resulted in a situation where the rights accorded to lawful, bonafide and tenants by occupancy have never been realised. In view of the failure of measures proposed by the Land Act 1998 to aid in regularization of occupancy, the registered land owners (BLB, Institutions) and KCCA have come up with alternate procedures through which occupants can regularize their occupancy. These are discussed in the following chapter.

6. LAND ACCESS, LAND SUBDIVISION AND LAND DEVELOPMENT PROCESSES

This chapter presents land access, land subdivision and land development processes under the land tenure systems in Kampala, the actors involved in these processes and their roles.

6.1. Land access processes

The Mailo land tenure system

Land ownership under the Mailo land tenure system is by private mailo owners and the Buganda Kingdom. Private Mailo land is owned in perpetuity and is accessed through purchase or inheritance upon which rights vested in a Mailo title are transferred to the new owner. The figure below shows the land transfer process for private Mailo land.

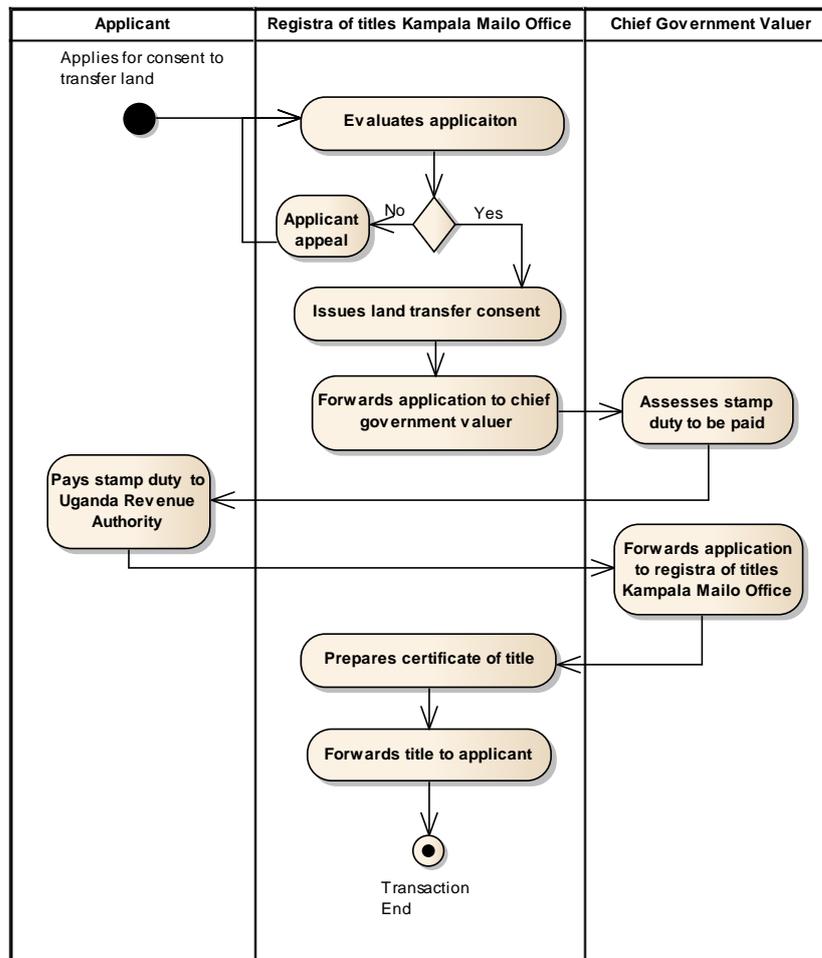


Figure 15: Land transfer process; private Mailo land

Land owned by the Buganda Kingdom is managed by the Buganda Land Board. Land falling under the board within Kampala was highly encumbered by Kibanja occupants when it was returned to the Kingdom by the central government in 1993. The board has however provided a process for regularization of occupancy by which it grants leases to occupants. The figure below shows the lease application procedure for land falling under the BLB.

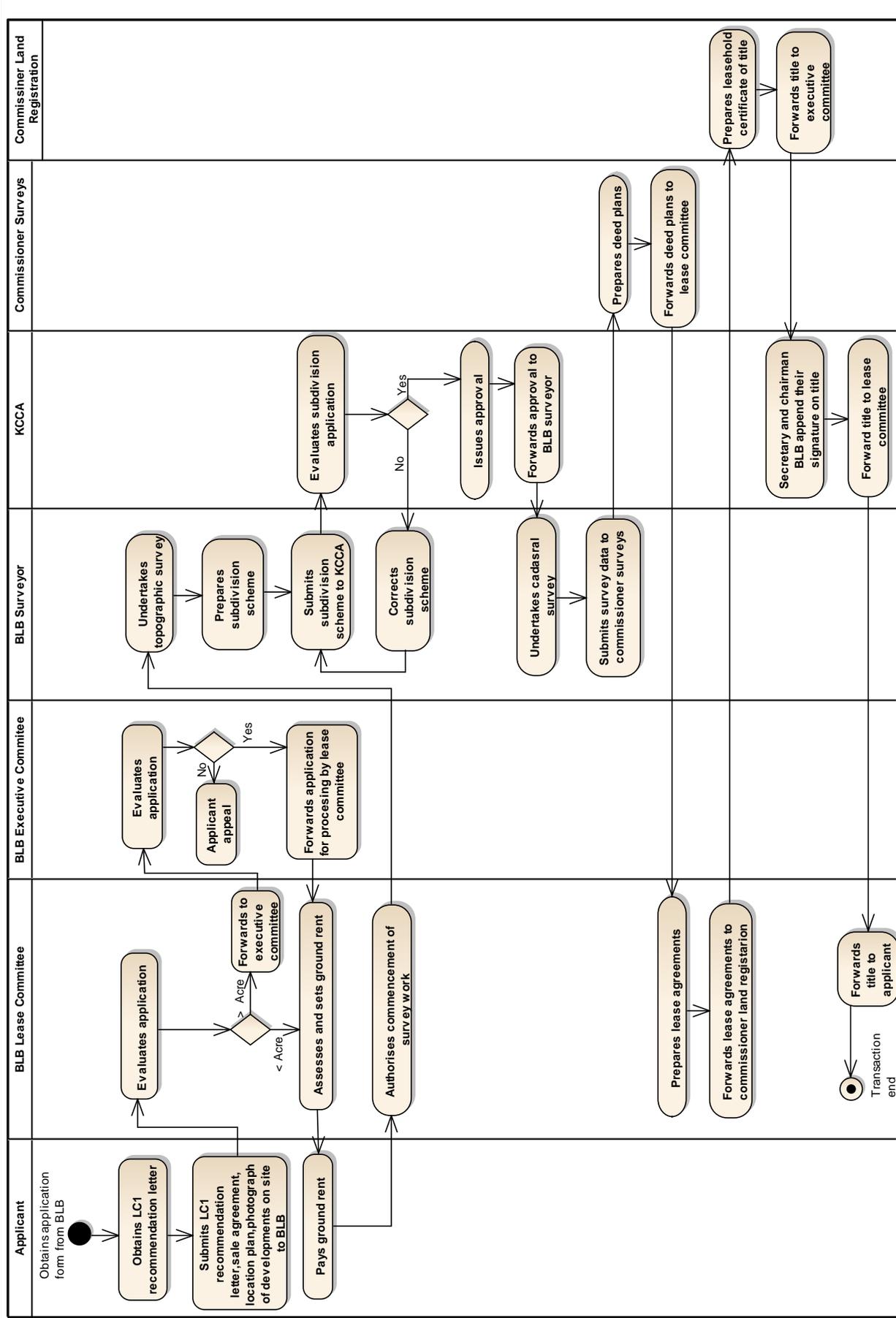


Figure 16: Lease application procedure for land managed by the BLB

The Leasehold land tenure system

Land falling under the leasehold land tenure system is managed by the ULC and the KDLB. The ULC manages land occupied by government offices, schools, hospitals and missions thus cannot be leased by the public for private use. Land falling under the KDLB is accessed by the public through the procedure shown below.

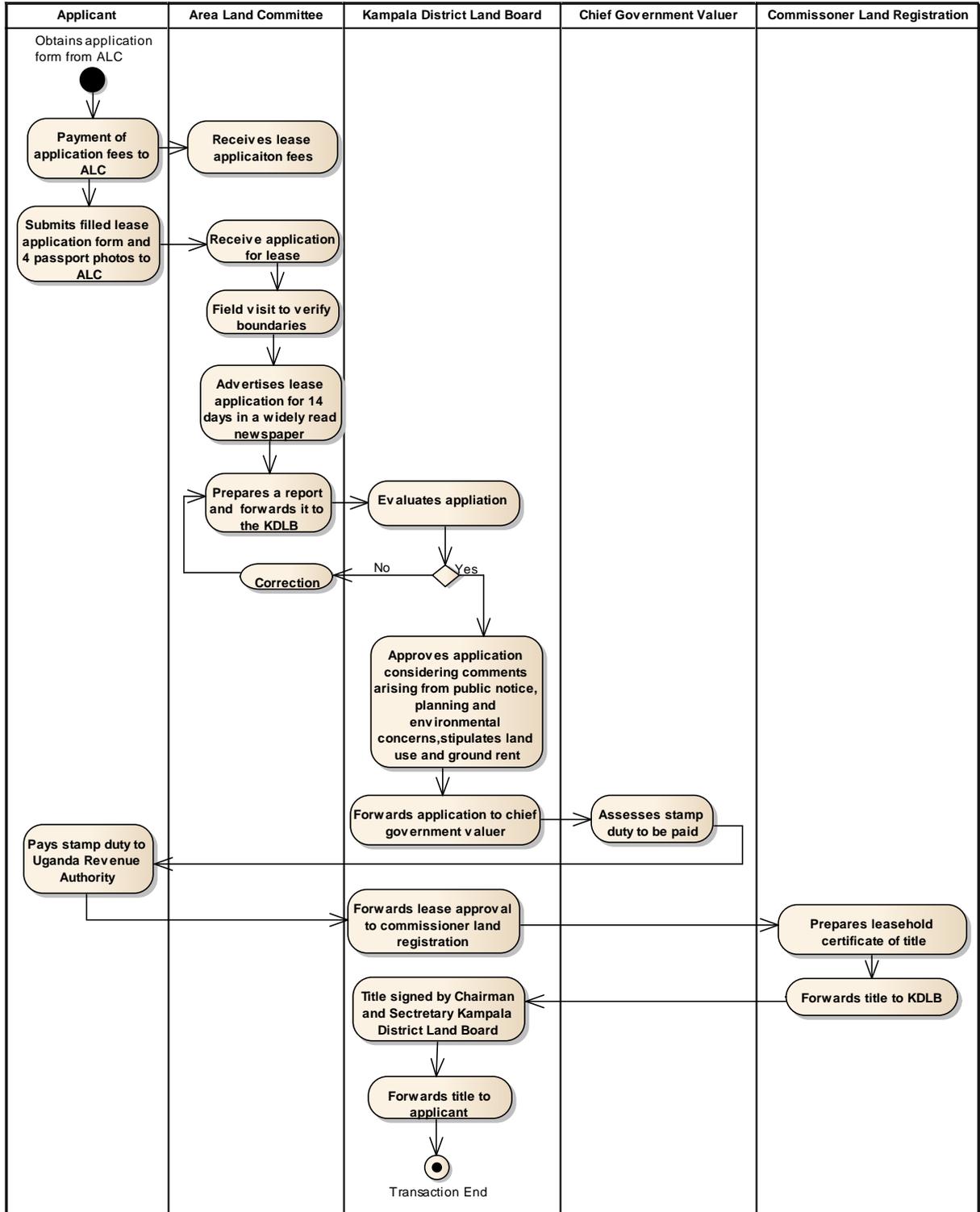


Figure 17: Lease application process for land under the Leasehold tenure system

The Freehold land tenure system

The Freehold land tenure system is comprised of land owned by institutions like churches, mosques, schools, NGOs and land converted from leasehold tenure. The land set aside for institutional use is not to be accessed and developed by private individuals, it is however heavily encumbered by Kibanja holders thus the registered land owners in consultation with KCCA have provided a process by which Kibanja holders on freehold land can regularize their occupancy though acquiring of leases. This is shown below.

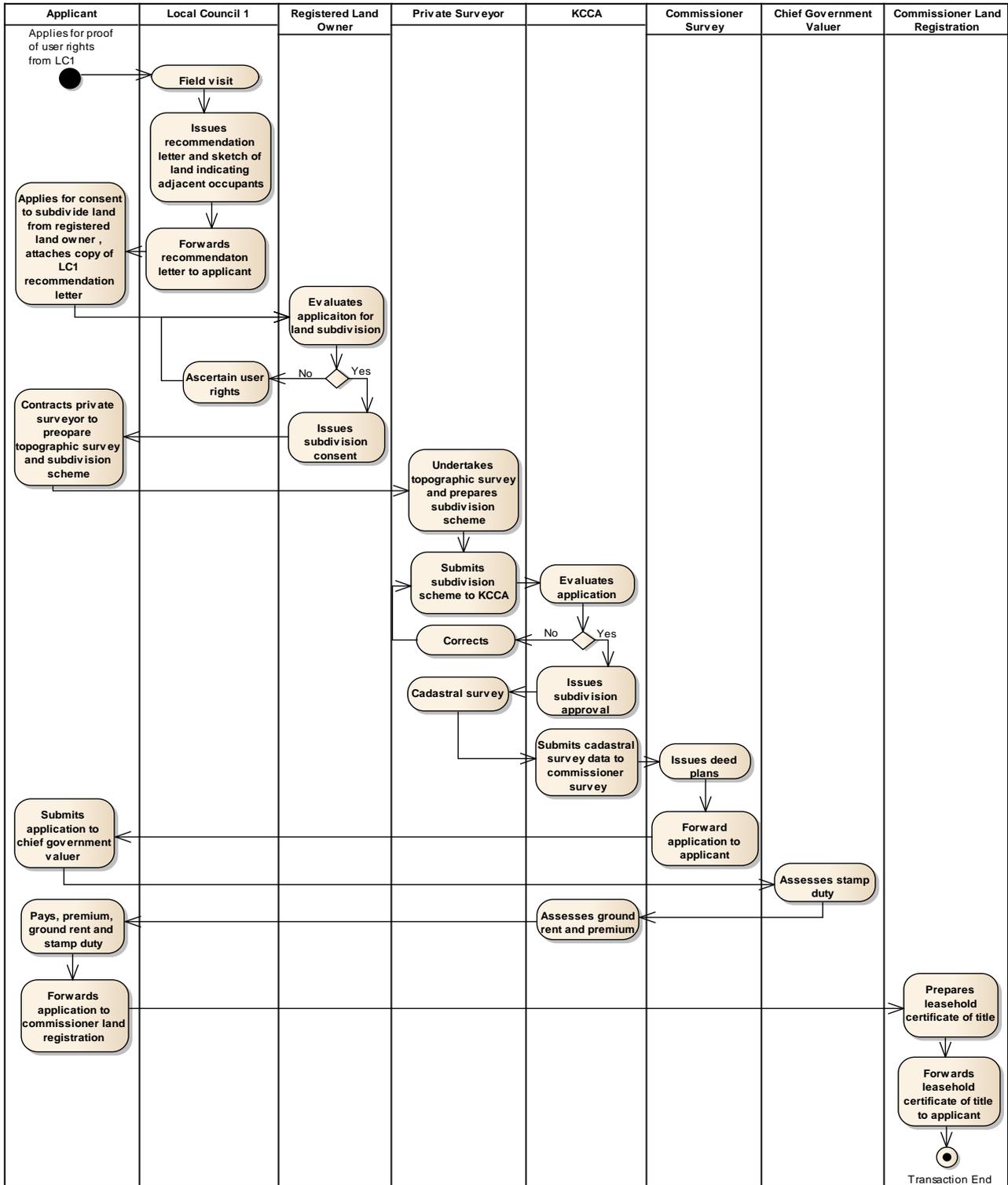


Figure 18: Lease application procedure for land under Freehold land tenure system

6.2. Land subdivision processes

The Mailo land tenure system

The subdivision process for land falling under Private Mailo owners is shown below.

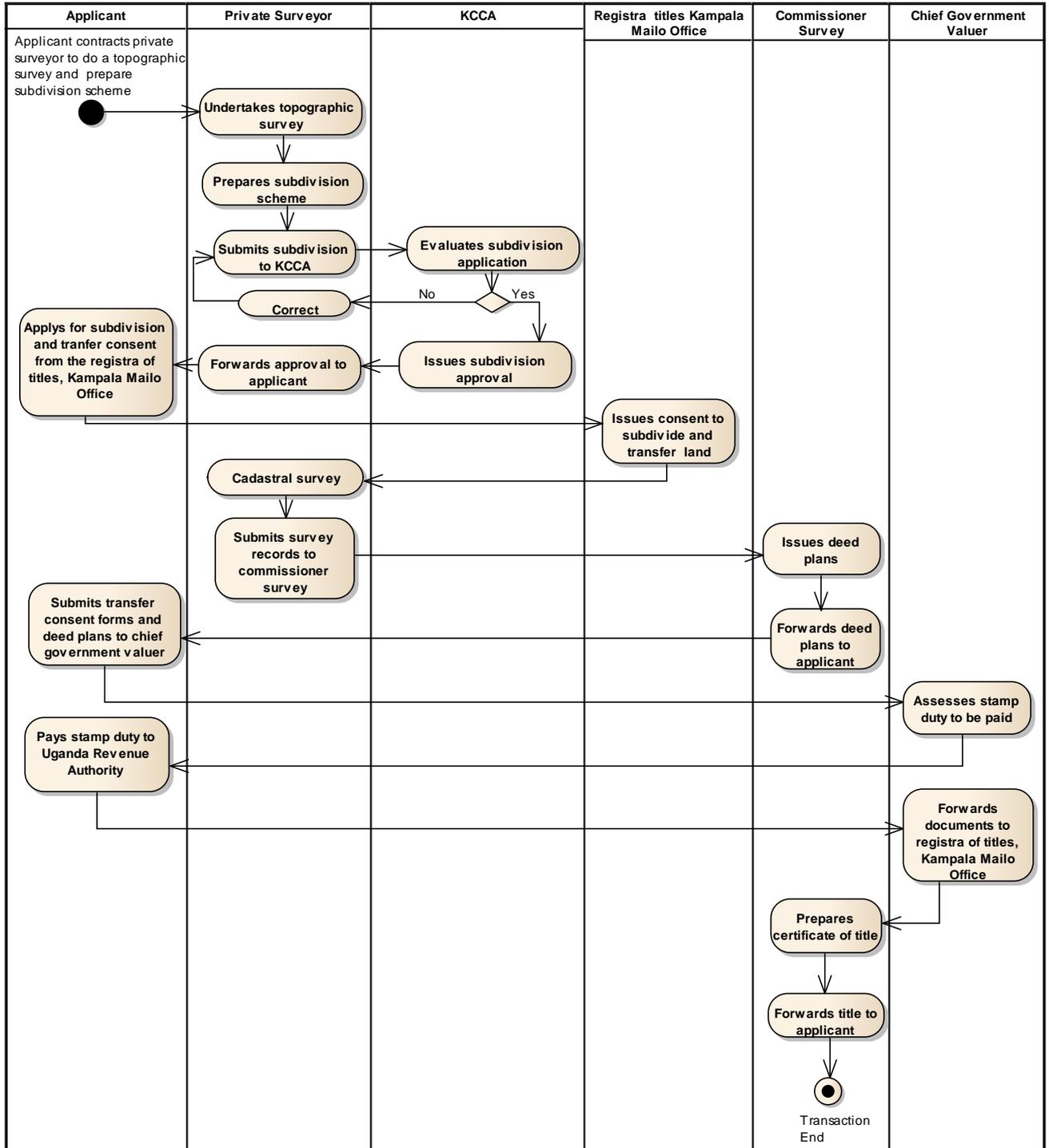


Figure 19: Land subdivision process for private Mailo land

The Freehold land tenure system

Land falling under the freehold land tenure system is informally partitioned by Kibanja occupants who have claims on the land. Subdivision and survey of boundaries is incorporated in regularization of occupancy procedure (Figure 18) discussed under land access processes.

6.3. Land development Processes

Section 12 of the Physical Planning Act 2010 vests the powers of preparation of physical development plans, implementation of physical development plans and development control on urban physical planning committees constituted in local authorities. Since the enactment of The Kampala Capital City Authority Act 2010 planning functions of the former Kampala City Council are executed by KCCA. KCCA is the only body charged with physical planning in Kampala thus all developments in the city are subject to the same application procedure. Development as defined under Section 2 of the Physical Planning Act 2010 incorporates both construction of buildings and subdivision on land therefore the process shown below incorporates both subdivision and building approval application processes.

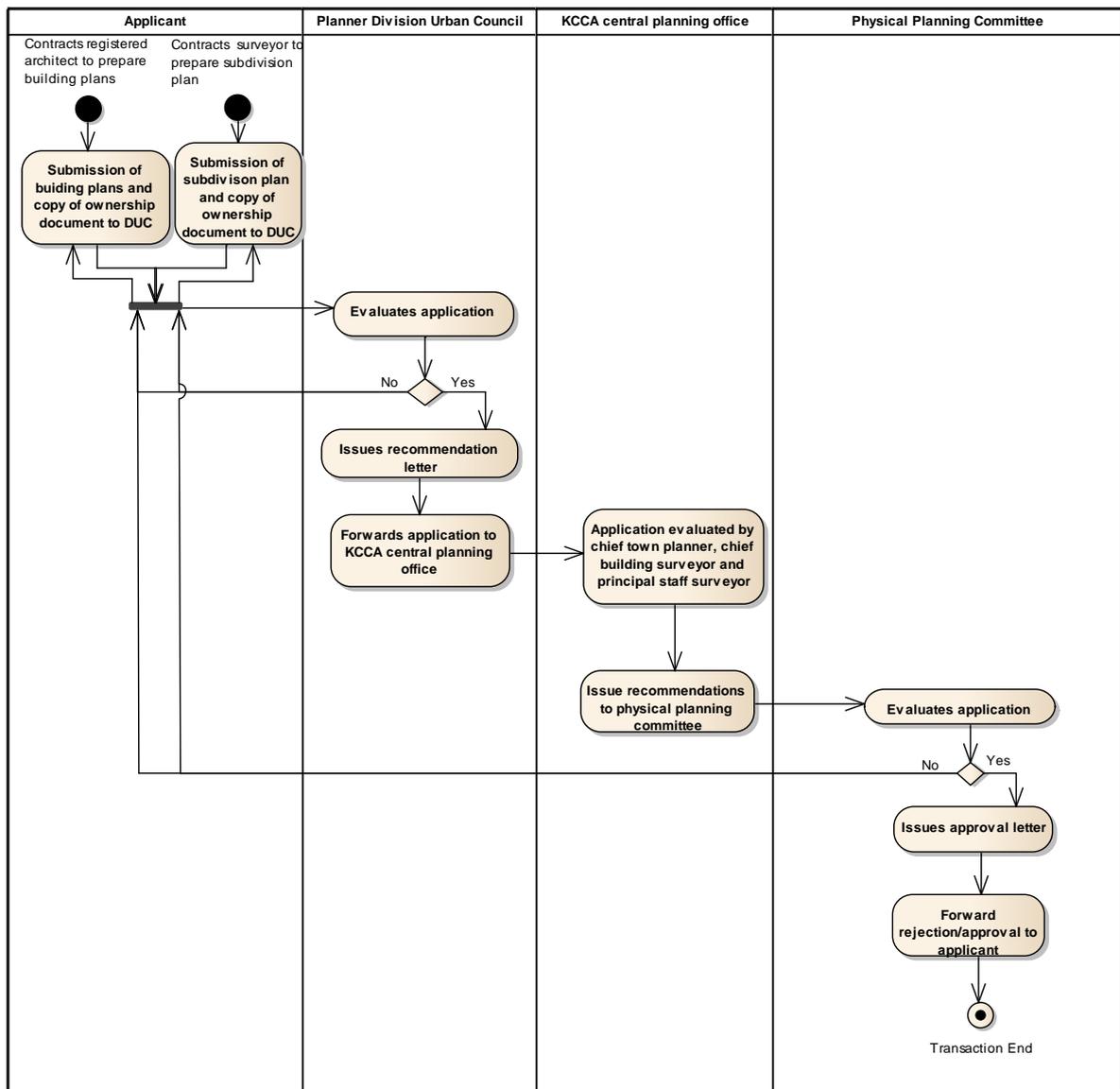


Figure 21: Development application procedure for land falling under the jurisdiction of KCCA

6.4. Conclusions

From the above discussions it is observed that the state of land rights under the different land tenure systems influences land access and land subdivision processes employed by actors. Land access processes under the Mailo and Freehold tenure systems are basically lease regularization procedures because of extensive Kibanja occupancy whose rights are not registered. Land subdivision under these tenure systems are part of the lease regularization procedure an indication that Kibanja claims to land are not surveyed. Land access and land subdivision processes under Leasehold tenure are separate and indication of well managed land rights. Also noted is the key role played by KCCA in approving subdivision and development applications under all the land tenure systems in Kampala and the requirement by KCCA for all subdivision and building applications submitted for evaluation to have attached copy of ownership documents which links land access to land subdivision and land development processes.

In the next chapter land access, land subdivision and land development processes are examined in detail within the selected case study areas with a view to assessing the effect rules of tenure have on these processes and the resultant effect on urban developments.

7. THE EFFECT OF LAND TENURE ON URBAN DEVELOPMENTS

This chapter presents the effects of land tenure on urban developments by examining land access, land subdivision and land development processes in the selected case study areas.

7.1. Case I: Bwaise III Parish

Bwaise III parish has a mix of residential (single dwelling units and Row houses), commercial cum residential, commercial developments and public facilities including churches, schools, mosques, public toilets among others. The main roads in the area (Bombo, Nabweru, and Kawaala Road) are fronted by storied commercial cum residential developments. The roads feeding into the main roads though motorable are not well defined but are also lined by commercial cum residential developments. The rest of the developments in the area are accessed via lanes defined by occupants to provide access to their houses. The figure below shows the spatial pattern of developments in Bwaise III

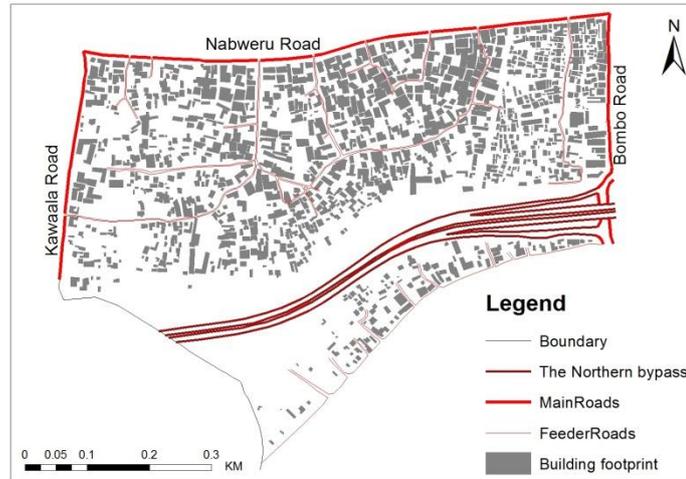


Figure 22: Spatial patterns of developments in Bwaise III

7.1.1. Land access

Land in Bwaise III being (a) Under the Mailo tenure system (b) Owned by the Buganda Kingdom is primarily under Kibanja occupation thus not subject to the issuance of new leases. Land access processes in the parish are limited to regularization of occupancy done through the lease application procedure illustrated by Figure 16. Most occupants in Bwaise III have however not regularized their occupancy. This is shown by findings of the survey done in the parish (Table 5 below) where majority of the occupants interviewed hold LC1 agreements and sale agreements as documentary evidence of occupancy.

Table 5: Documentary evidence of occupancy in Bwaise III Parish

Evidence of occupancy	Percentage %
LC1 Agreement	38.3
Sale Agreement	33.3
Lease from BLB	11.7
Others	16.7
NB. Total No. of respondents is 60	

Source: Household survey

LC1 agreements are drawn by executive members of Local Council 1 in charge of a zone; the lowest unit within the KCCA administrative structure while sale agreements are drawn between occupants when buying/selling land. The third entry in table 5 above represents occupants who have obtained leases from the BLB while category others represent occupants who do not hold any of the above documents as evidence of ownership.

Further investigation of evidence of ownership for occupants falling under category others showed that these occupants obtained permission to settle on land directly from the Buganda Kingdom via the *Omutongole*¹⁴ and comprise category (Lease) under means of accessing land or inherited land and do not hold any documents as evidence of occupancy. These occupants have been on the settlement for more than 30 years but comprise a minority as most of the occupants (68.3%) purchased land they occupy and have been in the settlement for less than 20 years. This is shown by the bar charts below

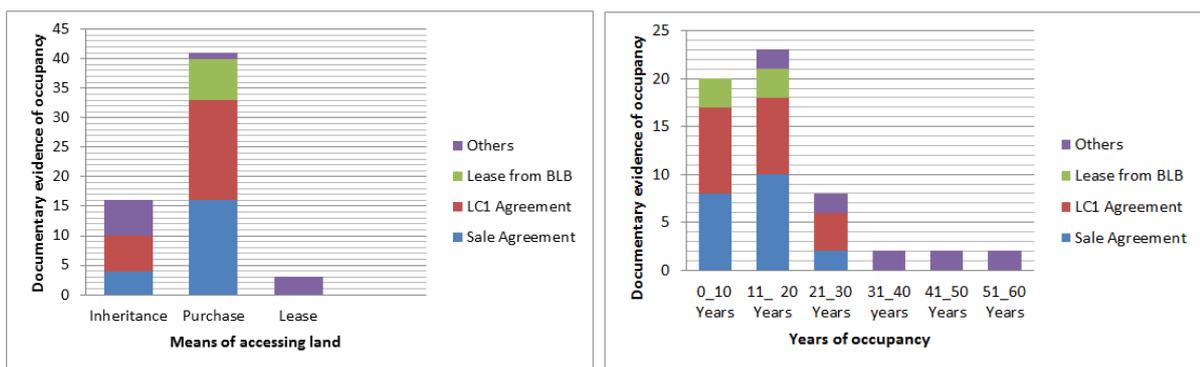


Figure 23: A comparison of documentary evidence of occupancy and means of accessing land and years of occupancy

Source: Household survey

7.1.2. Land subdivision

Most of the occupants in Bwaise III have not subdivided or subleased portions of their land to other people. Only 5% of the occupants interviewed have subdivided their land indicating that occupants have claims to small portions of land. The parish however has high population density (265 persons per hectare) according to UBOS (2002) and high density of developments. This is attributable to row houses partitioned mainly in to one roomed compartments constructed by occupants and rented out an observation made when conducting household interviews and verified through an in depth interview with one of the earliest occupants in Bwaise III.

7.1.3. Land development

Majority of developments in Bwaise III are constructed without approval of the KCCA. Out of the 60 occupants interviewed (38.3%) responded as having approvals from KCCA. This percentage is however high compared to the percentage (11.7%) of occupants who qualify (have leases from the BLB) to apply for development permission from the KCCA. A comparison of documentary evidence of ownership and development approval status (Fig.24 below) showed occupants with Sale agreements, LC1 agreements as having development approvals. Further investigation showed that these occupants obtain “verbal no objections” to put up buildings on land from KCCA officials at the Kawempe division office and have not obtained official development permission from the KCCA central planning office.

¹⁴ Omutongole is the chief in charge of a village which is the lowest administrative unit in the Buganda Kingdom

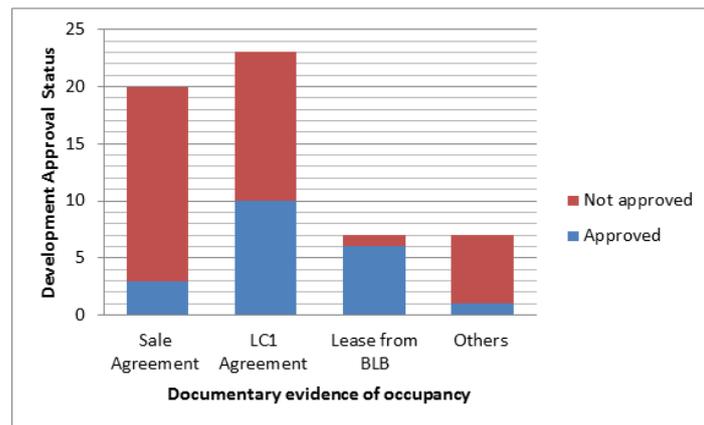


Figure 24: Comparison of development approval status and documentary evidence of occupancy

Source: Household survey

7.1.4. Observations

The findings of Case I discussed above are representative of land access, land subdivision and land development procedures undertaken on land under the Mailo and Freehold tenure systems which are predominantly under Kibanja occupancy. From the discussions the following observations are made;

- a. Because of Kibanja occupancy land access processes under the Mailo and Freehold tenure systems are largely informal. This evidenced by the high number of occupants holding LC1 and Sale agreements as documentary evidence of occupancy.
- b. Informality in land access processes is replicated in land subdivision and land development processes as LCI agreements and Sale agreements are neither recognized nor admissible as valid evidence of occupancy in the KCCA subdivision and development approval procedure.

These findings corroborate sentiments expressed by the Physical Planner interviewed at KCCA who highlighted the unregistered state of Kibanja occupancy as an impediment to planning in Kampala. He remarked “*land under the Mailo and Freehold tenure systems in Kampala has two owners, the registered land owners and Kibanja occupants who settle on land, they hold no title or papers to but they have possession on the ground. That is where the challenge comes in as far as planning is concerned.* This observation is also in line with findings of previous research on land tenure on urban developments by MoLHUD and UNDP (2008) , UN-Habitat (2007), Van Nostrand (1994) and Giddings (2009) all who identified multiple rights to land as one of the greatest impediments to planned urban developments in Kampala

To further illustrate the effect of Kibanja occupancy on land access, land subdivision and land development processes case II is presented below.

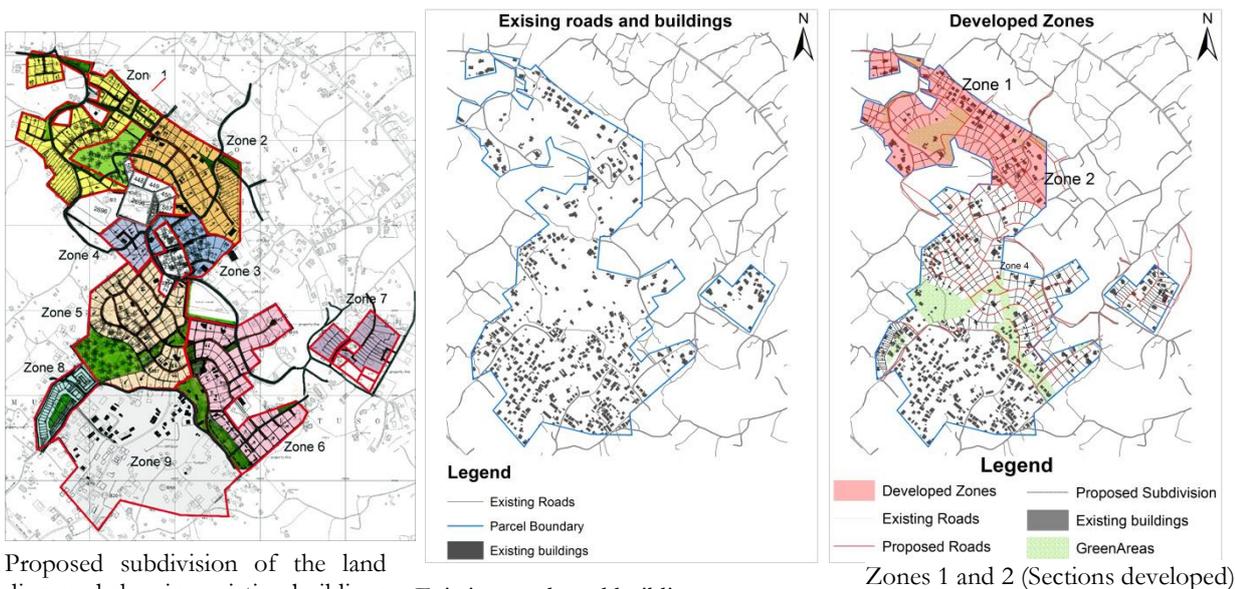
7.2. Case II: Mailo Land access by a real estate company

A real estate company intending to put up a high income residential housing approached the BLB with the intention of leasing land. The BLB identified land with minimum Kibanja occupation measuring approximately 141.5 hectares falling under Konge, Kyamula, Katuuso zones in Buziga for lease. The Real Estate Company applied for lease in November 2007 and was issued a provisional lease in December 2007 and final lease in January 2008. The duration it took to process the lease application is notably short

compared the five years highlighted by Giddings (2009) as the duration it takes to acquire leases on land under leasehold tenure.

Developments proposed by the company would entail subdivision of the land, construction of 350 houses on 90 acres with the remaining land set for recreational and educational use. The subdivision proposal made incorporated existing roads and houses. The proposed developments were grouped in to 9 phases. Phase 9 would be implemented last because of high Kibanja occupation. A topographic survey for the land was done in 2008 and subdivision and architectural plans submitted and development permission obtained from KCCA in February 2009.

The official interviewed at the BLB indicated that “*there were only 6 houses (occupants) on the land when it was leased to the Real Estate Company*”. The Real Estate Company however declared 25 acres of the land occupied by Kibanja holders when applying for lease to the BLB. After obtaining the lease, the company held meetings with about 127 occupants in the three zones to agree on ways of compensating them for the developments they have on land. The company also gave the occupants who could afford opportunity to buy land they occupy at between 10 and 16 Million Uganda Shillings. Occupation and construction on the land however continued. By February 2009 the number of Kibanja claims had risen (to 600, 1000, 2000). Again, the figure varies depending on the source of information indicating that the extent of Kibanja occupation is not known. The BLB responded by issuing eviction notices to occupants. Eviction notices and attempts to implement roads designed as part of the project by the real estate company were met with violent demonstrations and appeals to the *Katikkiro* (Prime Minister) of the Buganda Kingdom. The company has managed to develop sections of Zone 1 and 2 of the project and is issuing sub leases for the rest of the land. The maps below show the land discussed.



Proposed subdivision of the land discussed showing existing buildings and roads.
 Source: Architectural firm contracted to prepare layout plans for the proposed developments (http://www.symbion-int.com/view_my_project.asp?cid=38)

Existing roads and buildings.
 (Extracted by the researcher by comparing (Fig.26) with 2010 Kampala building footprint to bring out the extent of Kibanja occupancy on land.

Figure 25: Proposed developments on the land discussed under Case II

7.2.1. Observations

Case II above illustrates the challenges of acquiring land under Kibanja occupancy. From the above discussions it is observed that;

- a. Kibanja occupancy has made the process of acquiring land lengthy and complex. Developers have to deal with two parties the registered land owner through whom they acquire leases and the Kibanja occupants who own developments on the ground and who have to be compensated to free land for development a fact reiterated by the Physical Planner interviewed at KCCA who remarked *“After obtaining lease from the registered land owner developers have to compensate “buy out” all occupants on land before they can develop”*.
- b. The process of compensating Kibanja occupants is unstructured. This was affirmed by the Physical Planner interviewed at KCCA who highlighted the absence of a procedure to guide land valuation for the purposes of compensation as a cause of speculation in land values a situation he expressed as *“Everybody having his own value”* resulting in high land prices. Similar views were expressed by the independent land expert interviewed who remarked *“There is no legislation stipulating compensation procedures for kibanja occupants this is left to negotiation between the land owner and the occupants, developers have to negotiate with many occupants on one property making it difficult to assemble land for development.*
- c. The unregistered state of Kibanja occupancy is an impediment to the process of identifying genuine Kibanja claims; this when coupled with the unregulated compensation procedures described above has created conditions suitable for speculative occupation of land by individuals hoping to get compensated, hindering access to land for development.

Case III below illustrates land access, land subdivision and land development processes under the Leasehold land tenure system.

7.3. Case III: Ntinda Parish

Urban developments in Ntinda are classified into distinct land use zones. These include a medium density residential zone, low density residential zone, and an industrial zone. The medium density residential zone is comprised of the first developments in Ntinda constructed as part of housing estate for East African Railways and Harbours staff by the government in the 1960s. The low density residential zone borders Kiwatule and UPK parishes and is distinctly under residential use with developments on relatively larger parcels of land compared to the middle density residential zone. The industrial zone is located on land fronting Kampala Road and is a part of the wider industrial zone located adjacent to the Railway line. The parish has a commercial area encompassing the commercial node designated for the housing estate initially constructed but which has extended to include properties fronting Ntinda Road. This area also houses numerous offices for Non-Governmental Organizations and professional firms attracted to the area by affordable office and parking space. All developments in Ntinda parish have access roads.

The figure below shows spatial pattern of developments in Ntinda parish

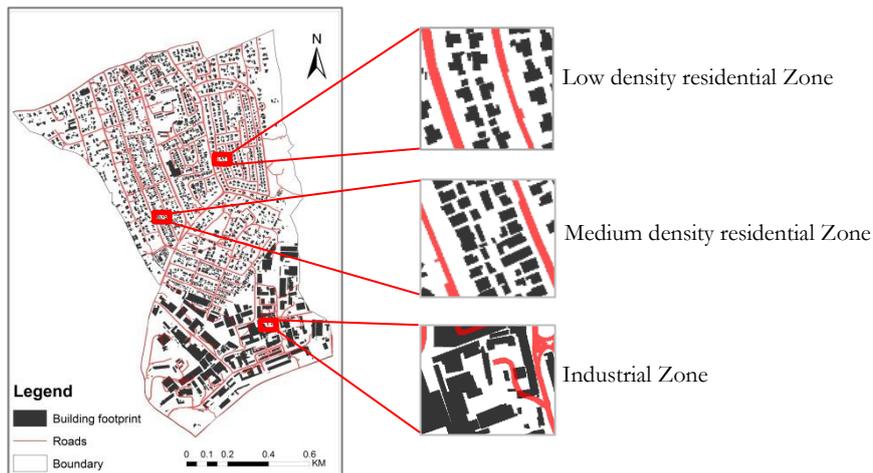


Figure 26: Spatial pattern of developments in Ntinda Parish

7.3.1. Land access, land subdivision and land development processes

Land in Ntinda is under the Leasehold land tenure system thus it has been acquired, subdivided and developed in accordance with Land access, Land subdivision and Land development processes illustrated by (Fig. 17,20,21) discussed under chapter 6.

7.3.2. Observations

Urban developments in Ntinda are formal and fairly well planned and typify developments on land under leasehold tenure located in Nakasero, Kololo, Kamwokya, Bugolovi, Luzira, Nakawa and Naguru. Though part of the land under leasehold tenure was planned and developed formally during the colonial period, urban developments in areas that evolved after independence like Ntinda are formal. The Physical Planner interviewed attributes this to;

- a. The process of accessing leasehold land (Fig.17) which incorporates such aspects as planning, cadastral survey, issuance of titles and the attachment of user covenants to titles which stipulate the use land is to be put to.
- b. Ease of enforcement of Land access process for land under leasehold tenure because land is owned by the government thus individuals intending to lease land have to comply with the set procedure. As the Physical Planner interviewed affirmed *“Even where leasehold land does not lie within a planned area, it is always handled in this way. Subdivided properly and good access roads provided. It is easier to regulate development on this land because even the user covenant has been placed there; this is for residential, single family units, commercial etc.”*

7.4. Conclusion

This chapter set out to illustrate the effect of land tenure on urban developments in Kampala by examining land access, land subdivision and land development processes in three case study areas. From the discussions above it emerges that land access processes play a key role in determining whether urban developments are undertaken formally or informally in Kampala. Land access processes under the Mailo and Freehold tenure systems are largely informal due to the high incidence of Kibanja occupancy whose rights are not formally registered. Kibanja holders cannot obtain formal development permission because

the LC1 and sale agreements they hold are not recognized as valid evidence of occupancy by KCCA thus subdivisions and developments on land under Kibanja occupancy (Mailo and Freehold tenure) are undertaken informally. On the other hand land under leasehold tenure is formally registered owing to the well enforced land access process by the KDDB consequently subdivisions and development processes on this land are undertaken formally.

Land access processes being the means through which people access rights to land are influenced by rules of tenure which “define how people access rights to land” (FAO, 2002b, p. 7). Subdivision and Development processes entail making material changes on land and comprise development according to a definition provided in Section 2 of the Physical Planning Act 2010¹⁵ hence the inference drawn above about land access processes determining whether urban developments are undertaken formally or informally in Kampala. From the above the link between land tenure and urban developments in Kampala is drawn. This is illustrated by the figure below.

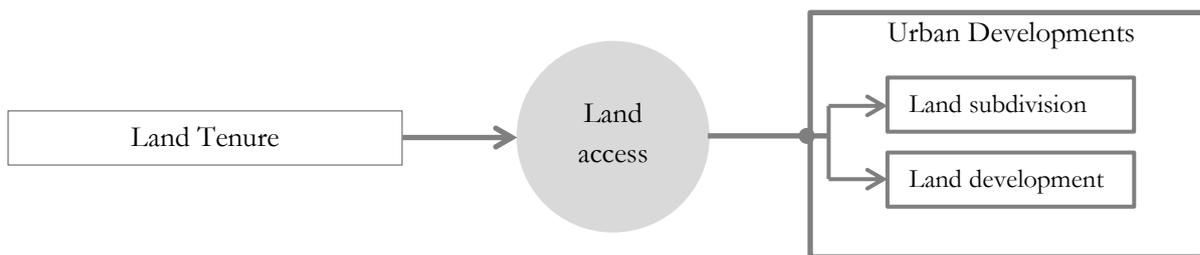


Figure 27: The link between land tenure, land access, land subdivision and land development processes in Kampala.

Having highlighted the key role played by land access processes in influencing urban developments in Kampala, the next chapter which focuses on land tenure related challenges encountered by actors in essence examines land tenure systems in Kampala with a view to identifying aspects which constrain or contribute to informality in land access processes.

¹⁵ The Physical Planning Act 2010 ,Section 2, “development means (a)the making of any material change in the use or density of buildings or land or the subdivision of any land; and (b) the erection of such buildings or works and the carrying out of such building operations”(RoU, 2010b, p. 7).

8. LAND TENURE RELATED CHALLENGES

This chapter presents land tenure related challenges encountered by actors in land access, land subdivision and land development processes and measures which can be taken by actors and actors at a higher level to address these challenges.

8.1. Land tenure related challenges encountered by actors in land access, land subdivision and land development processes

Kibanja occupancy was identified as the key source of challenges encountered by actors (BLB, Private Mailo Owners, Institutions) in land access, land subdivision and land development processes under the Mailo and Freehold land tenure systems. These challenges are therefore presented together followed by challenges encountered by actors under Leasehold tenure.

8.1.1. Mailo and Freehold land tenure systems

Land access processes for land under the Mailo and Freehold tenure systems are largely informal as shown by the high number of occupants holding LC1 and sale agreements as evidence of occupancy in Case Study I discussed in the previous chapter. Factors underlying the informal state of Kibanja rights are (a) The disputed rights over (bonafide occupants, ground rent, and eviction provisions) accorded to Kibanja occupants by The Land Act 1998 and (b) Failure of mechanisms proposed by The Land Act 1998 to aid in regularization of Kibanja occupancy. The land committees, land tribunals and mediators proposed by the act to facilitate registration of Kibanja rights have never been instituted thus identification of occupants (Lawful, Bonafide and Tenant by occupancy) has never been done and no certificates of occupancy have ever been issued. Land access challenges faced by the BLB, Private Mailo owners and Institutions are associated with these factors. These are;

- a. Kibanja occupancy impedes the issuance of leases by BLB to developers and the sale of or transfer of land by Private Mailo owners and Institutions because Kibanja interests have to be compensated first, this illustrated by Case II presented in the previous chapter.
- b. Regularization of occupancy by Kibanja occupants is impeded by;
 - i) Low ground rents prescribed by The Land Act 1998 which are considered a disincentive to regularization of occupancy. Section 32 (3) of The Land Act 1998 grants District Land Boards and the minister for lands powers to set annual ground rent payable by occupants while Section 32 (5) of the same act restricts annual ground rent payable by occupants to 1,000 Uganda shillings irrespective of the area or location of land. Following recommendations by the Uganda National Land Policy (2011) which advocated for setting of annual ground rent commensurate to the value of land, the annual ground rent payable by occupants in Kampala for 2012 was set at 50,000 by the minister for lands. This amount is however still low compared to lease regularization fee charged by the BLB (US\$ 1,200,000) and is deterrent to regularization of occupancy for Kibanja holders on land owned by the Kingdom. The low ground rent also hinders the process of clearing occupants to regularize their occupancy by private mailo owners and institutions who argue that the ground rent is still low compared to the high value of developments on land views best illustrated by this remark by the independent land expert interviewed who argued that *“The Mailo owners have refused because you cannot cheat me and say you are going to pay 50,000 per annum when you are putting up*

row houses with 10 units, each one is US\$100,000 on my land and you are going to pay me 50,000 because The Land Act talks of nominal ground rent”.

- ii) Security offered against eviction to Kibanja occupants by the Land Amendment Act 2010. Kibanja occupants can only be evicted for non-payment of ground rent (already deemed very low) or upon issuance of an eviction order by a court.
- iii) Recognition of rights of lawful and bonafide occupants by The Land Act 1998 even without documentary evidence of occupancy¹⁶ which is a disincentive to the regularization of occupancy.
- iv) Disputed rights of Bonafide occupants by the registered land owners which hinder the clearance of bonafide occupants intending to regularize their occupancy. The rights of freehold owners accorded to Bonafide occupants by the Land Act 1998 are challenged by registered land owners because bonafide occupants being individuals who occupied land unchallenged by the land owner for 12 years before enactment of the 1995 constitution occupied land in the late 1970s and early 1980s a period of political instability in Uganda when most registered land owners were in exile or could not challenge their occupancy (Schwartz, 2008).

Land subdivision challenges encountered by actors are also linked to the unregistered state of Kibanja rights. The registered land owners (BLB, Private Mailo owners and Institutions) cannot control land subdivision processes because they are not aware of subdivision and transfer transactions done on their land by occupants. Land under Mailo and Freehold tenure is already partitioned based on the extent of Kibanja claims thus registered land owners cannot implement KCCA recommended subdivision standards like provision of roads of access, minimum road standards or meet the recommended minimum parcel size of (50x100 feet) when subdivisions are eventually done during regularization of lease.

Majority of Kibanja occupants hold LC1 and sale agreements as evidence of occupancy and are locked out of development application procedure provided by KCCA thus develop informally.

8.1.2. Leasehold Tenure System

Land tenure related challenges encountered by the KDLB on land under leasehold tenure are mainly related to the land access process. These are;

- a. The lengthy and bureaucratic lease application procedure set by the government for accessing land under leasehold tenure. The lease application procedure is made lengthy by the numerous consultations which have to be made with different bodies i.e. KCCA over issuance of user covenants, Commissioner Surveys over issuance of deed plans and Commissioner Land Registration over issuance of leases and the un computerised state of records in these offices.
- b. An existing conflict over management of leasehold land between KCCA and KDLB creating a standoff hindering the process accessing land.

¹⁶The Land Act 1998, Section 32(9) “For the avoidance of doubt the security of tenure of a lawful or bonafide occupant shall not be prejudiced by reason of the fact that he/she does not possess a certificate of occupancy” (RoU, 1998, p. 38)

8.2. Measures which can be taken by actors to improve land access, land subdivision and land development processes

In discussing measures which can be taken by actors to improve land access, land subdivision and land development processes a two pronged approach has been adopted. First, measures which can be taken to improve land access processes are discussed then measures which can be taken to improve land subdivision and land development processes in the absence of clear land access processes.

Measures proposed to improve land access processes for land under the Mailo and Freehold land tenure systems address challenges of Kibanja occupancy presented under subheading 8.1.1 above. These are the measures that have been adopted by actors to improve land access processes identified during key informant interviews at the BLB, KCCA and KDLB. These are;

- a. Posting of BLB staff to Division Urban Councils to aid in regularization of occupancy at the local level therefore eliminating the need for occupants to go to Buganda Land Board offices to apply for lease.
- b. Provision for payment of lease regularization fees of USh. 1,200,000 charged by the BLB in instalments to encourage regularization of occupancy.
- c. Provision of a process by Institutions and KCCA for regularization of occupancy for Kibanja occupants on freehold land (Fig18) discussed under land access processes.

The effectiveness of these measures is however minimal because awareness of these provisions is limited to occupants who apply for lease. The independent land expert interviewed attributes this to the regularization of occupancy approach pursued by registered land owners where the BLB and Institutions do not engage in any exercises to identify and register occupants on their land. It is the duty of occupants to regularize their occupancy¹⁷. Therefore there is need by the registered land owners to undertake public sensitization to create awareness among occupants of the availability these measures.

Other measures which could improve land access processes based on discussions with the key informants interviewed include undertaking a land audit by registered land owners to establish extent and nature of Kibanja claims on their land. This would aid in

- Tracking land transactions (subdivision and transfer) on land by Kibanja occupants
- Regularization of occupancy
- Compensation in cases where leases are issued to developers
- Control speculative occupation of land

Measures which can be taken by actors to improve land subdivision and land development processes in the absence of clear ownership documents include the issuance of no objection letters by registered land owners (BLB, Private Mailo owners and Institutions) to occupant's intending to submit subdivision and development applications to KCCA for evaluation.

Land under Leasehold tenure is owned by the government thus actions to improve land access, land subdivision and land development processes under this tenure are initiated by the central government, categorized as higher actors in this research. These are discussed below.

¹⁷ The Land Act 1998, Section 31(1); "... it is the duty of occupants to take all reasonable steps to seek to identify the registered owner of the land for the purposes of undertaking negotiations with that owner concerning his or her occupancy of land" (RoU, 1998, p. 37)

8.3. Measures which can be taken by actors at a higher level to improve land access, land subdivision and land development processes

Measures which can be taken by actors at a higher level to improve land access, land subdivision and land development processes are presented in two ways. Measures which can be taken by the central government related to policy and legislation on land tenure which has a direct effect on land access processes and measures which can be taken by KCCA to improve land subdivision and land development processes in spite of inadequacies in land access processes.

8.3.1. Measures which can be taken by the Central Government

Land access challenges associated with the Mailo and Freehold land tenure systems stem from the contested, poorly administered multiple rights to land. In discussing measures which can be taken to improve land access processes under these tenure systems it is necessary to explore approaches that have been advanced by experts to resolving multiple rights to land in Kampala. The independent land expert interviewed, Okuku (2006), Schwartz (2008) propose a redefinition of landlord tenant relations. These proposals are in line with statements by the Uganda National Land Policy (2011, p. 21) which underscored the need to “disentangle the multiple, overlapping and conflicting interests and rights to land under Mailo and Freehold tenure”. This they propose can be achieved through;

- The setting up of a land fund to either aid occupants in purchasing their interest on land or aid the government in purchasing registered interest on land and selling it to occupants at rates set on “social justice and equity considerations”(RoU, 2011, p. 22). Implementing such a measure would however be expensive. Schwartz (2008) cites a similar fund set up to facilitate occupants purchase their interests in Ankole, Singo and Bunyoro ranches as being in financial deficit.
- Formulation of a compensation legal regime to ensure fairness in compensation between registered land owners and occupants. The independent land expert interviewed maintains that this cannot be achieved with the current legal regimes which leave compensation to negotiation between registered land owners and occupants¹⁸.
- Redefinition of bonafide occupants and the rights accorded to these occupants. The Uganda National Land policy (2011) proposes this be done on the basis of conditions under which occupants settled on land and conditions which made registered land owners not challenge occupancy.
- Review of legal provisions on determination of ground rent to allow landlords charge rents on land registered to them and allow ground rents charged to be proportionate to the value of land.

The official interviewed at the KDLB identified a project currently being undertaken by the Ugandan Government in conjunction with the World Bank whose aim is to create a Land Information System, computerization of land records and training of relevant staff in Kampala as a measure that would reduce the cost and duration of land registration process improving land access processes not only under the Leasehold tenure but also under Mailo and Freehold tenure.

Other measures which could be taken by the central government to improve land access processes include a re-examination of tenure related provisions in The Land Act 1998 deemed contradictory to subdivision and development control approaches embraced by KCCA. These include provisions in;

¹⁸ The Land Act 1998, Section 31 (1); “.....it is the duty of occupants to take all reasonable steps to seek to identify the registered owner of the land for the purposes of undertaking negotiations with that owner concerning his or her occupancy of land”(RoU, 1998, p. 37)

- Section 32(9) of The Land Act 1998 which though secures the rights of lawful and bonafide occupants to land by recognising their rights even in the absence of certificates of occupancy is a disincentive to obtaining documentary evidence of occupancy which is a precondition for submission of subdivision and development applications at KCCA.
- Section 29 of The Land Act 1998 provides for the conversion of leases existing before 1998 to freehold tenure. Conversion of land to freehold tenure could hamper the enforcement of user covenants by eliminating the need to obtain consent from KDLB when subdividing and changing the use of land. The appropriateness of such a provision should be reconsidered given challenges encountered by KCCA with subdivision and development control for land under Mailo and Freehold tenure (Nkurunziza, 2004).

8.3.2. Measures which can be taken by KCCA

Subdivision and development processes for land under Leasehold tenure are well enforced thus land is relatively well planned. Effective implementation of subdivision and development processes under Mailo and Freehold tenure is however hampered by multiple rights to land. In view of the existence of factors that have militated against effective resolution of multiple rights to land by various efforts including The Land Act 1998, The Land Amendment Act 2010, The Uganda National Land Policy, the significant resources (time and financial) required to implement the measures proposed to improve land access processes and the high demand for developable land caused by high population growth, measures proposed here are actions which can be taken by KCCA to improve land subdivision and land development processes despite informal land access processes.

The development regulatory framework implemented by KCCA is rigid and heavily depended on clear land ownership yet a large percentage of land in Kampala is under Mailo tenure typified by informal land holding by Kibanja occupants. This is characteristic of physical planning standards and regulations in developing countries which Fekade (2000) citing Mattingly (1996) described as out dated, inappropriate, alien, and based on legal ownership of land which has rendered them unresponsive to the range of informal land rights characteristic of land ownership in cities in developing countries. To bridge the gap between land use control regulations and informal developments in developing countries, Fekade (2000, p. 134) proposes setting of “bare minimum enforceable standards and regulations in informal developments”. This is in line with views expressed by the independent land expert and Physical Planner interviewed who recommended a reorientation of the physical planning standards and development application approaches implemented by KCCA to the local tenure situation. From the foregoing the following proposals are made which if pursued could improve land subdivision and land development processes under Mailo and Freehold tenure.

- Evaluation of the admissibility of LC1 agreements as evidence of occupancy when applying for development permission. Local Councils have continued recording Kibanja occupancy through the issuance of LC1 agreements, demarcating Kibanja claims through sketches showing extents of Kibanja claims and adjacent occupants, and adjudicating disputes between Kibanja occupants in place of the failed land tribunals, land committees, recorders and mediators proposed by The Land Act 1998. They have social legitimacy and support according to findings of research done by SIDA (2002), this affirmed by the high number of occupants holding LC1 agreements as evidence of occupancy in Bwaise III parish and are the lowest administrative unit within KCCA thus KCCA should consider the acceptability of LC1 agreements as documentary evidence of occupancy for Kibanja holders applying for subdivision and development permission. This was

also noted by Nkurunziza (2004) who recommended an examination of potential contributions that Local Councils could make towards planning and management of land in Kampala. This proposal is in line with recommendations for bridging the gap between formal and informal land management approaches in Sub Saharan African countries advanced by Kombe and Kreibich (2000) who advocate for the identification and support of accepted land management bodies in informal areas and Farvacque and McAuslan (1992, p. 51) who advocate for the “strengthening of existing dispute resolution bodies” .

- Issuance of temporal development permits with conditions absolving KCCA of land disputes and inhibiting further subdivision and development on land without KCCA approval thus establishing a basis for development regulation. The Physical Planner interviewed at KCCA advocated for the issuance of such permits to occupants based on clearance from LC1, submission of a letter of no objection from the registered land owner and a survey report indicating location of land, road of access and adjacent developments. Farvacque and McAuslan (1992) support setting up of such local forms of regulation rather than imposing stringent physical planning standards. They however underscore the importance of formulation and enforcement of these simplified planning regulations in consultation with the public.
- Implementation of the simplified planning regulations would be more effective if supported by an image showing roads and spatial extents (parcels) of Kibanja claims. This proposal is in line with recommendations by Mabogunje (1992, p. 41) for formulation of “half-way cadastres to aid in management of cities in Sub Saharan Africa” . Such an image could;
 - a. Form a basis for incremental implementation of subdivision and building regulations¹⁹ where rudimentary road and building standards existing in informally developed areas are upgraded overtime to levels sufficient for effective functioning of urban spaces at redevelopment and as income levels of occupants increase. This approach is applied to upgrade substandard commercial residential subdivisions in Latin American countries (Fekade, 2000).
 - b. Form informed basis for evaluation of subdivision and development applications by Kibanja occupants and address the negative effects of the piecemeal planning approach currently being implemented by KCCA where evaluation of subdivision and development applications are done without due consideration of developments in the immediate neighbourhood and proposals for future developments. Views expressed by the Physical Planner interviewed at KCCA.
 - c. This image could curb speculative occupation of land if taken at a date decided upon in consultation with the registered land owners and occupants and on which records of occupants and developments would be based with any additional developments considered illegal occupation not subject to compensation.
 - d. Aid in controlling of further encroachment of wetlands largely falling on land owned by the Buganda Kingdom and managing subsequent developments in these environmentally fragile areas.

¹⁹ “Subdivision regulations include lot sizes, layouts street improvements and procedures for dedicating private land for public uses and building regulations define the way new structures are to be built and the materials to be used”(Farvacque & McAuslan, 1992, p. 64)

The proposal by Mabogunje (1992, p. 41) to formulate “half-way cadastres” arguably found expression and enhancement in the Social Tenure Domain Model (STDM), an innovative tool advanced by the Global Land Tool Network (GLTN) and partners which by design facilitates the recording of informal land rights often ill-defined, ambiguous, multiple, overlapping and difficult to register by conventional systems (Augustinus, 2010). The STDM was applied in 2011 by The National Slum Dwellers Federation of Uganda (NSDFU) to link spatial data and data on land use and land rights with data obtained from enumeration of slum dwellers in Mbale Municipality (UN Habitat, 2012). The information obtained through the STDM will be used to inform discussions on slum upgrading between slum dwellers and the Municipality (ibid). The success and lessons learnt from Mbale Municipality could be drawn upon and applied to implement the STDM in recording rights for Kibanja holders under the Mailo and Freehold tenure in Kampala. If implemented the STDM would not only provide the KCCA basis for incremental planning and development control but would also;

- a. Reduce the cost of obtaining subdivision and development permission because it would eliminate the need to undertake survey whose cost is currently borne by Kibanja occupants.
- b. Aid registered land owners in managing land transactions among occupants hence controlling speculative occupation of land, manage payment of ground rent and lease applications.
- c. For the central government the STDM would provide potential for the identification of occupants according to the definitions (bonafide, lawful, tenants by occupancy) provided by The Land Act 1998.

8.4. Conclusion

From the foregoing the disputed poorly managed rights of Kibanja holders emerge as the source of challenges faced by actors leading to informality in land access processes, this informality is replicated in land subdivision and land development processes because the subdivision and development control approaches employed by KCCA are not compatible with the informal land access processes under the Mailo and Freehold tenure systems. To address challenges arising out of the poorly managed rights measures are proposed directed at tenure aspects causing informality in land access processes which can be implemented by the central government however in view of the complexity involved in resolving conflicting rights and putting up effective attendant administration systems, emphasis is laid on incremental recording of rights and incremental implementation of subdivision and development regulations tailored to the local tenure situation. Land tenure related challenges encountered by actors under Leasehold tenure arise from the lengthy land access process which will be addressed by the Land Information System being put up by the central government.

9. SUMMARY OF FINDINGS CONCLUSIONS AND RECOMMENDATIONS

The aim of this research was to assess the effect of land tenure on urban developments in Kampala. In order to do this, relevant aspects of land tenure and urban developments were presented as research sub objectives which were investigated through research questions. This chapter presents summary findings of research sub objectives, followed by conclusions and recommendations.

9.1. Summary of findings

9.1.1. Sub objective 1

The first research sub objective sought to examine land tenure systems in Kampala. This was done by first identifying the land tenure systems then examining rights defined under these land tenure systems. Decision to examine land tenure systems was informed by the understanding that access to land on which urban development takes place is regulated by rules of tenure (FAO, 2002b); that rules of tenure not only define rights to land but how those rights are accessed and exercised (ibid) and that land rights determine what one can do on land (Dale & McLaughlin, 1999). Research findings show that (a) Land in Kampala is held under the Mailo, Freehold and Leasehold land tenure systems (b) Mailo is the dominant land tenure system in Kampala. (c) There are multiple rights to land under Mailo and Freehold tenure systems; rights of the registered land owners and rights of Kibanja occupants who own developments on land (d) Rights of Kibanja occupants are contested and poorly administered (e) Rights for land under Leasehold tenure are fairly well managed.

9.1.2. Sub objective 2

This study examined land access, land subdivision and land development processed under the land tenure systems in Kampala. Selection of these processes was based on findings of research done by Farvacque and McAuslan (1992) and Postiou and Ioannidis (2006) who identified land access, land subdivision and land development processes as the three stages of in the land and property development process where informality can occur. Land access, land subdivision and land development processes are however implemented by actors therefore sub objective two of this study sought to identify actors involved in land access, land subdivision and land development processes under the land tenure systems in Kampala, to examine their roles and the land tenure related challenges they encounter. Key actors identified are private Mailo owners and BLB under the Mailo land tenure system, Institutions under the Freehold land tenure system and the KDLB under the Leasehold land tenure system. These actors are charged with the management of land they own (private Mailo owners and Institutions) or under their control (BLB and KDLB). Their roles in land access include the issuance of leases to individuals accessing land for the first time or to Kibanja holders regularizing their occupancy. Their role regarding land subdivision is limited to issuance of subdivision consent to Kibanja holders on Mailo and Freehold land and lessees on leasehold land. The KCCA was identified as the actor charged with physical planning and development control for land under all tenure systems in Kampala. This is achieved through subdivision and development regulation.

The study identified contested poorly administered rights of Kibanja holders as the greatest the source of challenges faced by actors under the Mailo and Freehold tenure systems. This has resulted in informal land access processes with consequent effects leading to informality in land subdivision and land development

processes. Not only are Kibanja rights largely without formal registration as illustrated by Case I findings their compensation procedures are not streamlined and are thus a hindrance to issuance of leases to developers and transfer of land. Land access challenges under Leasehold tenure are associated with the lengthy non computerised land access process and conflict over management of land between KCCA and KDLB.

Land subdivision challenges encountered by actors under the Mailo and Freehold tenure systems arise out of the unregistered nature of Kibanja occupancy. Subdivisions under these tenure systems are done informally by occupants (without consent from the registered land owners or approval from KCCA). This hampers implementation of subdivision standards by KCCA such as minimum plot sizes or adequate road and infrastructure provisions as physical extents of Kibanja claims become the overriding consideration in subdivision plan preparation. Subdivisions on land under Leasehold tenure are done by KDLB before issuance of leases and are therefore well regulated.

Land development challenges encountered by KCCA on land under Mailo and Freehold tenure are also associated with unregistered Kibanja occupancy. Subdivisions and developments on land under Mailo and Freehold tenure are undertaken informally as development regulation procedures implemented by KCCA are limited to land with clear ownership documents. Subdivisions and developments on land under Leasehold tenure are largely formal because of ease of enforcement of regulations related to these processes created by the reasonably well managed land registration process.

9.1.3. Sub objective 3

The third sub objective sought measures which can be taken to improve land access, land subdivision and land development processes under the land tenure systems in Kampala. This was approached two fold in this study; Measures which can be taken by actors and measures which can be taken by actors at a higher level. To improve land access processes under Mailo and Freehold tenure, this study recommends strengthening though publicization of measures currently being implemented by actors such as provision of lease regularization procedure for Kibanja holders on Freehold land and opportunity to pay lease application fees in instalments provided by the BLB. The study further recommends issuance of letters of no objection by actors in instances of undisputed Kibanja occupancy to facilitate formal subdivision and development processes.

The study identified the central government and KCCA as actors at a higher level. Proposed measures which can be taken by the central government to improve land access processes under Mailo and Freehold tenure are geared at addressing causal factors for contested Kibanja rights. These include setting up of a land fund to aid in purchase of conflicting interests, provision of clear regulations for compensation of Kibanja occupants and review of provisions on determination of ground rent. Other proposals entail review of sections in The Land Act 1998 viewed as undermining development control approaches employed by KCCA.

Based on existing literature on practical ways of addressing informal urbanization, the study proposes a rethink of subdivision and development control approaches employed by KCCA and encourages the adoption of subdivision and development control measures sensitive to the local tenure situation. These include utilizing existing benefits of the roles currently played by LC1s in recording and adjudicating Kibanja rights in the preparation of a half-way cadastre, recognizing LC1 agreements as valid evidence of occupancy thus admitting subdivision and development applications by Kibanja occupants to the KCCA

approval process, formulation of lower subdivision and development standards for land under Kibanja occupancy and public participation in setting up of these standards creating ownership and ease of implementation .

9.2. Conclusions

Overall study findings attribute informal developments in Kampala to (a) inefficient Land access processes caused by poorly administered land rights and (b) land use planning and development regulations ill-suited to the local tenure situation. Land under the Mailo and Freehold tenure systems (which form majority land holding in Kampala) is predominantly under Kibanja occupancy. Kibanja rights are contested, poorly administered and largely informal while subdivision and development regulation procedures implemented by KCCA are pegged on presentation of clear land ownership documents. The result has been an impasse where subdivisions and developments on land under the Mailo and Freehold tenure systems are undertaken informally but which land continues to be subdivided and developed due to high demand for land caused by high population growth resulting in the informal expansion of Kampala.

9.3. Recommendations

In view of the research findings and rapid expansion of Kampala city the study recommends:

- Detailed research on nature of developments under Kibanja occupancy which is not uniform across Kampala but varies in density and type depending on location of land, income levels of occupants among other factors. The findings of such a research should underpin the formulation of subdivision and development regulations for land under Kibanja occupancy by KCCA.
- Urban developments in Kampala have sprawled in to the surrounding areas, now delineated as the Kampala Metropolitan area and officially recognized by KCCA as evidenced by its inclusion in the spatial planning area covered by the on-going project to update the 1994 Kampala structure plan. Land in the surrounding areas is however under customary tenure and is unregistered following poor, if any implementation of the measures provided for management of such land by The Land Act 1998. This study recommends research on implications customary tenure would have on urban developments in the Kampala Metropolitan area.

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APPENDICES

Appendix 1: Sample Key informant interview schedule

Interview guide: Buganda Land Board (BLB)

Dear Participant,

I request your participation in a research I am undertaking on the effects of land tenure on urban developments in Kampala at the faculty of geo-information science and earth observation of the University of Twente. Discussions in this interview will be on the role of the BLB in the access, subdivision and development of land under its control. The information you provide will be treated confidentially and will be used solely for the purposes of this research. This interview will take about one hour.

I request to record this interview in order to capture all the details of the discussion.

1. For how long has the BLB been in existence?
2. What are the functions of the BLB?
3.
 - a) What is the total area (Ha) of land in Kampala that is controlled by the BLB?
 - b) In which parishes is land owned by the BLB located?
4.
 - a) What was the state of land before it was returned to the Buganda kingdom by the central government? (Occupied or un occupied?)
 - b) If occupied, what forms of land holding existed on land? (Lawful occupant, bonafide occupant, tenants by occupancy)
 - c) If occupied has the BLB taken any measures to regularize occupancy?
 - d) If yes, what process do occupants follow to regularize occupancy?
 - e) Has the BLB encountered any challenges from existing occupants? If yes what are they?
 - f) How has the BLB addressed these challenges?
5. What processes should one go through to
 - a. Access land under the BLB?
 - b. Subdivide land under the BLB?
 - c. Develop land under the BLB?
6. Which other bodies does the BLB interact with respect to
 - a. Land access procedures?
 - b. Land subdivision procedures?
 - c. Land development procedures?
7. What land tenure related challenges does the BLB encounter in executing
 - a. Land access processes for land under its control?
 - b. Land subdivision processes for land under its control?
 - c. Land development processes for land under its control?
8. Has the BLB put in place measures to address the challenges identified in Question 7 above? If yes, what are they? If no, why?

Appendix 2: Household Questionnaire

Dear participant,

I request your participation in a research I am undertaking on the effects of land tenure on urban developments in Kampala at the faculty of geo-information science and earth observation of the University of Twente. Your participation will contribute to further understanding of the process of accessing subdividing and developing land in Bwaise III Parish.

The information you provide will be treated confidentially and will be used solely for the purposes of this research.

Thank you for your kind assistance in this study.

Date	Village Name	Ref. No

Land access

1. Respondents name -----
2. Gender
 - Male
 - Female
3. Land use
 - Residential
 - Commercial
 - Religious
 - Educational
 - Commercial – cum- residential
 - Others (*Specify*)
4. For how long have you lived here?
5. How did you acquire the land you currently occupy?
 - Inheritance
 - Purchase
 - Lease
 - Other (*Specify*)
6. What documentary evidence of occupancy do you have?
 - Sale agreement
 - LC1 agreement
 - Lease from Buganda Land Board
 - Other (*Specify*)

Land subdivision

7. Have you leased or given out part of your land to other people?
 - Yes
 - No
8. If Yes, to how many people?

9. What procedure did you follow when demarcating the boundaries of areas to be leased?

10. What documentary evidence do the people occupying your land have?

- Sale agreement
- LC1 sale agreement
- Lease from Buganda Land Board
- Other (*Specify*)

Land development

11. Are the developments on your land approved by KCCA? (Yes, No)

If No, Why -----

12. What challenges did you encounter when

- a. Accessing land -----

- b. Subdividing land -----

- c. Developing land -----

13. What measures did you take to address these challenges -----

What measures should be taken by other relevant actors to address these challenges -----

