

CONTROL OF ALLIENATION OF AGRICULTURAL LAND IN KENYA

**A case for Reform of the Land
Control Act (Cap.302) of 1967**

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**Dissertation submitted in partial fulfilment of
the Requirements for the LLB Degree, University of
Nairobi.**

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PREFACE AND ACKNOWLEDGEMENTS

Much as I would have liked to carry out as much research as possible concerning the Land Control Act and its shortcomings, I should admit that the area of discussion is very wide. As a result, what one may find in this dissertation is just a mere contribution to the literature that already exists on issues concerning land control.

The most serious problem faced during the writing of this paper was that of time. This work is supposed to be done alongside other subjects, not forgetting the classes we have to attend, and yet the maximum time given, for its writing is only six months. I thus regard, I admit that it is not only through my own efforts that this work became what it is.

My first and foremost regards go to my supervisor in the writing of this dissertation, MR. ARTHUR ESHIWANI, without whose advise I would not have known what the head or tail of my paper should have been. I also extend my gratitudes to the following:

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2. All my firends, and classmates for their support, during the writing of the paper.
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4. MRS. GRACE OGALLOH who spent a lot of her time and paper in typing this work for me.

ABBREVIATION (CASES)

A.C.	Appeal Cases (English)
E.A.	East African Law Reports
K.H.C.D.	Kenya High Court Digest
K.H.C.C.C.	Kenya High Court Civil Cases
K.H.C.C.A.	Kenya High Court Civil Appeals.

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I N T R O D U C T I O N

To ensure that there is maximum utilization of Land which is the main backbone of our economy, the government has assumed a supervisory role of all dealings in agricultural land. The Land Control Act was therefore enacted in 1967 with an aim of regulating, by means of public control, the manner in which the land owner, or the interest-holder in land is supposed to deal with his land.

The scope of chapter 302, the principle legislation in this respect has been discussed in dissertations in the past years. In some of these dissertations the structure, powers and operation of Land Control Boards have been well documented.¹ Others have chosen to illustrate the operation of the Act with special reference to specific areas of study.² There is also a lot of literature found in Books and Articles on this subject.³ All this literature however does only set out the injustices caused by the application of the Land Control Act but have never actually come up with the Act so that it can serve the purpose it was intended to serve.

This dissertation cannot actually be said to excell the already existing literature but an addendum to it. The writer comes up with a study of the Land Control Act with a view of reforming it so that in its application justice can be seen to be done to the majority of the Kenyan population.

In chapter one, the history of Land Control in Kenya is traced right from the time Kenya was colonised up to 1967 when the present Land Control Act was enacted.

The second chapter deals with the characteristics of agricultural land in Kenya, the importance of its market and the justification for control of this market. This will also include the scope of the Land Control Act and sort out the so-called controlled transactions and how they are effected by the Land Control Boards.

The composition, powers and jurisdiction of the Land Control Boards are dealt with in the third chapter. The Land Control Boards and the courts, which are the machinery for enforcing the law concerning land control are also critically examined in this chapter.

In the last chapter the writer comes up with a conclusion of the injustices and problems caused in the way the government controls the alienation of agricultural land. Possible solutions and recommendations are therefore given that would ensure that the Act serves the purposes it was supposed to serve.

FOOTNOTES

1. Dissertations:

- NDEGWA, S.R. : Land Control: An insight into the regulations of land issues in a historical perspective.
- KHAN, M.N.: Land Control
- KIONI, A.M. : The Socio-Economic and Cultural Implications of the Land Control Act of 1967.
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2. Dissertations:

- BOSIRE, S.E.O. : Control of Transactions involving land in Bogetutu Division of Kisii District.
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NOTE:

All dissertations quoted above can be obtained at the University of Nairobi, Gandhi Library - Africana Section.

CHAPTER ONE

THE HISTORY OF LAND CONTROL IN KENYA

Before one looks at the legal rules that govern land at present, they are bound to concern themselves in finding out how and why these rules have come into being as they are. It should be realised that the law does not exist in a vacuum but that it is part and parcel of the society. Law has developed, as society developed, both socially and economically. In other words, to understand why a legal norm exists, one has to learn the purpose that norm is supposed to serve in the contemporary society and why particularly that kind of norm exists, for instance, in Kenya and not in America. This is why in this dissertation the writer has first chosen to discuss the history of land control in Kenya before discussing the law as it is today. It is the writer's clear submission that this approach, as Mutunga puts it:

"brings one closer to reality than a concern with the legal norms per se".¹

The Fact that most of the laws we have in Kenya were imported from Britain is not disputable. For purposes of discussion therefore, this chapter is divided into a number of sections. In its first section, the writer tries clearly to differentiate African and English land tenure. This will make any reader to understand how and why the British government, after acquiring Kenya as one of their colonies changed African land tenure into the English one to suit their own interests.

The latter part will be divided into the laws introduced during pre and post second world war eras; In this chapter, the writer also briefly discusses the period between 1963 and 1967 when the land Control Act² was enacted, and tries to explain up to what extent this act has departed from the methods used by the colonialists to make sure that land was exploited to the maximum.

AFRICAN VERSUS ENGLISH LAND TENURE

The Europeans and Africans had different ideas concerning the holding of Land. To the Africans, as reflected by Nyerere:

"Land is a free gift from God. It is for all men to use now and in future"³

This is the main reason why among Africans land was owned communally. This meant that every member of the society had access to land. Nobody could claim to own any particular piece of land and therefore he could not sell that land without any communal checks. This was meant to ensure that every member of the African Society led a good life⁴ and it emerged from the belief by the Africans that all human beings are equal and should therefore have equal access to land.

The use of land was controlled by the elders of a particular community. They made sure that land was by all means preserved for future generations. These elders also settled land disputes that arose among the members of their clan or village.

The fact that no man had exclusive control over land therefore means that English conceptions like tenancy did not exist among the indigeneous societies. Even a muhoi⁵ of the Kikuyu community had some degree of access to land on the understanding that he would respect the rights of the members of the land-owning family and that he would keep peace with them.

This system of land control among the African community was to ensure that there were equal usufructory rights to land for all. On the other hand, early English history has it that their kings were the sole owners of land against only other person. In other words the kings had the radical title to land. This meant that their subjects only had the right to possess and use land but not to own the same. ^{dominium title} This reached its apex during the feudal era when people began to possess large tracts of land while others continued to be rendered landless. Thus the belief that "all men are not of equal worth and are essentially materialistic" came up.⁶ With time therefore it came to be accepted in English jurisprudence that property did not refer to the possession of a radical title but the right to use land. Individuals who owned land at this time therefore had exclusive control over it.

At the time of the introduction of English Land Tenure in Africa, Britain was the leading industrial nation in the world and was pursuing the free enterprise economy on the basis that people could own as much property as they could acquire. This would be so even if it was at the expense of making other communities suffer. The European community felt that African Land Tenure should be replaced by the more superior English Land Tenure. This was due to

the assumption by the colonial authorities that the African was in the lower stages of human evolution and that is why no individual African owned land - a reason for European acquisition of African land under the umbrella that it was waste and unoccupied.

Introduction of individual ownership was therefore seen as a way of civilizing the African.

Individual ownership of land therefore had to be introduced. This started with the coming of the settlers from Europe and South Africa at the beginning of this century. These settlers' main aim was to own land. To adequately administer this move the incoming colonial authorities used the law to obtain full government control over land. This included government control over the acquisition, use and alienation of land, the topic that we are concerned with here.

LAND CONTROL BEFORE 1944

Due to the fact that our present Land Control Act has adopted most of its provisions from the Colonial land control legislations, it is proper to first examine the aims of the colonial legislations to see if they achieved what our present Act is presently aimed to ensure - that there is a maximum utilization of land for the economic development of the country.

Land control in Kenya started as early as 1886 when Kenya was born as a result of the Anglo-German Agreement by which Kenya was realised as a British sphere of influence. Between 1886 and 1895 Britain ruled Kenya through its chartered Imperial British East African company.

The year 1897 saw the enactment of the British Settlement Act to govern colonies that Britain had acquired. It is in this same year that the Imperial British East African Company was given power to deal with land at the coastal strip of East Africa which fell under the sultan's dominion. But extensive land control came into being in 1895 when Britain declared Kenya her protectorate and assumed direct control over the same. In the late 1890s settlers came into Kenya and therefore laws had to be enacted to govern their land acquisition and use.

In 1902 the crown lands ordinance which was passed provided for control and disposition of land to the settlers and therefore introduced the principle that ownership of interests in land was dependent of the development of the land. The Commissioner was given power to lease African lands that "fell vacant" to the European settlers for a period of 99 years. This ordinance did not protect the interests of the Africans in that lands that were empty due to shifting cultivation and grazing were deemed to be vacant whereas Africans still had use for them.

The 1902 ordinance put the ceiling acreage at 1,000 acres for the settlers and where more land was required the consent of the Secretary of State had to be sought. Also if any transfers were to be considered as valid then they had to be consented to by the Commissioner. This can be regarded as a move by the colonial government which was aimed at making sure that each of the few settlers that that there were at this time had enough land to carry out agriculture. It must have been assumed that 1,000 acres was a piece of land which every settler could be able to manage. This is

clearly shown by the fact that if any more land was needed then the consent of the Secretary had to be obtained. That means that the government only stepped in if anybody wanted to own more than 1,000 acres of land to determine if they could be able to handle this extra land or not.

The aims of the 1902 ordinance were furthered by the 1915 Crown Lands Ordinance.⁸ Unlike the 1902 ordinance which had respected rights of natives to land the 1915 ordinance redefined land to include land occupied by the natives. This meant that natives' rights to land were extinguished and Africans became tenants at will of the Crown.⁹ This ordinance also introduced measures of control of dealings in land in the white highlands. It prohibited the subdivision of plots, the employment of Africans to manage the farms and the engagement in any transactions in land without the consent of the governor.

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Among other moves towards land control were the powers given to the governor to make rules for owners of land to develop their land to certain expected standards. By 1940 inspectors had been appointed to see to it that the required developments had been carried out.

The above moves were not enough because it was assumed that the white land-owners already knew how to use and develop land and there was no need of running after them from time to time. But the colonial government was mistaken and it became necessary to enact a legislation that would properly control land usage. These reasons

led to the enactment of the first ever land control legislation, the Land Control Ordinance¹⁰ of 1944. This ordinance put an end to the Europeans dealing with land in any manner as they had done before. It was also a measure to ensure that only those who were capable of owning land and developing it could own land. This was immediately necessitated by the fact that the second world war had caused a dwindle in farm production because most lands had been neglected by the farmers. This step therefore had to be taken to ensure f that land was properly used for the benefit of the whole country. The land tenure committee that was appointed in 1941 had this to recommend:

"Any system of land tenure would be unsatisfactory which permitted unre-
stricted transfer and unrestricted
use and misuse of land" 11

LAND CONTROL AFTER 1944 (1944 - 1967)

It has already been seen that the year 1944 saw the enactment of the first Land Control Ordinance and the reasons why that necessitated its enactment. This ordinance established a land control board whose consent had to be obtained before any transaction in land ^{was} to be seen as being valid. The board was also given powers of imposing conditions as to the development of land and failure to comply with these conditions would lead to ones forfeiture of his land.

The composition of the land control board that was established by this ordinance shows the clear fact that there was no separation of powers. The administrators took upon themselves the task of deciding matters concerning land. The board had the commissioner as its Chairman, a finance secretary, a director of agriculture and

six other people. There was no express provision for a legal officer to be included on the board to advise on land law. Appeals were to be made to the Land Control Appeals Tribunal whose decision was final and could not be questioned in any court of law.

The 1944 ordinance was only meant to control the white highlands which were referred to as the Scheduled Areas. All this time the Africans who were presumed to own no land were not thought of. But after the second world war and the depression that followed, the administration began to see the reserves as productive units. By-laws were introduced to encourage cash-crop farming. But no more methods of land control could be effective unless there was a change from the African communal system of holding land to individual land tenure. In advocating for this, Swynnerton stated that Africans:

"Must be provided with such security of tenure through an indefeasible title as will encourage him to invest his labour and profits towards development of his farm as will enable him to offer it as security against such financial credit as may be open to him"¹²

This idea was further developed by the East African Royal Commission which viewed customary land tenure as a hindrance to both agricultural and social development. To this commission the only way to make the African develop his land was to have him own it individually. However, the commission noted that if Africans would start to own land individually it would ^{lead} to uncontrolled absolute proprietorship. It was therefore necessary that there be a system of control so that land would produce adequately.

The introduction of individual land tenure was also a political move to punish those who were anti-government. It was aimed at making those who had opted to move to the forests during the Mau Mau rebellion by making them landless. This would be effected by registering the loyalists who had remained at home as sole ^{pro} prietors of the land that there was. Thus when the Mau Mau fighters came back from the forests they would have no claim to land at all.

The recommendations of the two groups mentioned above¹³ formed the basis for land registration and the land control ordinance. Registration became a way of making the African an absolute proprietor of land by giving him a registered title to land.¹⁵

Registration of land for the Africans was therefore meant to serve the same purpose it had served in Europe as defined in the case of Gibbs v. Messer¹⁷ that the object of registration is:

"To save persons dealing with registered land from the trouble of going behind the register to investigate the history of their authors' title and to satisfy themselves of its validity. The end is accomplished by proving that anyone who purchases bona fide and for value from a registered proprietor and enter his deeds of transfer or mortgage on the register shall thereby acquire an indefeasible right notwithstanding of its authors' title.

Registration is therefore an authoritative document that was going to define rights to clearly defined units of land. This was through giving names and particulars of the owner and any interest affecting the parcel and which could not be enjoyed by the owner.

Even though registration made the Africans absolute proprietors of land, they could not be left to deal with this land in any manner. This would lead them to subdividing, selling and even living on this land without adequately developing it. These were among the reasons for the enactment of the 1959 land control (Native Lands) ordinance. This ordinance provided for the establishment of divisional and provincial land control boards without whose consent dealings in land would be void. All transactions in land were to be controlled except:

- (a) Transmissions of land unless it involved subdivision.
- (b) Foreclosures.
- (c) Transactions made in favour of the government or trust board.

According to section 11 of the Ordinance the board would refuse consent to any transactions which would cause the f creation of smaller pieces of land and therefore lead to less productivity.

At independence in 1963 the 1944 and 1959 Land Control Ordinances were merged into one to make uniform laws for every land-owner in Kenya whether in the former scheduled or non-scheduled areas (African reserves). These rules were to serve for three years. In 1965 the time was extended for two years until 1967 when the present land control Act was enacted.

The fact that we now have our own land control legislation enacted by our own members of parliament does not mean that we have in any way departed from the colonial land control system. The only major differences are the composition of the Land Control Boards and the application of the Act to most areas of the country without any

discrimination. Whether or not the 1967 Land Control Act is in any way accomplishing its mission of ensuring productive use of land shall be seen in the subsequent chapters.

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FOOT-NOTES

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5. An outside who could acquire cultivation and building rights on land belonging to a particular family group.
See: Kenyatta , Facing Mount Kenya pg. 18 H.E.B. 1938.
6. Kimani Njeri's Dissertation on: The Land Control Act (1967) with Special Reference to Kandara Division of Muranga District. pg. 3.
7. No. 21 of 1902.
8. No. 12 of 1915.
9. Isaka Wainaina & Another vs. Murito wa Indagara [1921] 9 EALR.
10. No. 22 of 1944.
11. Land Tenure Comm. Report - Nairobi - 30th Sept. 1941 Parag. 20
12. Swynnerton - A plan to intensify the development of African Agriculture in Kenya.
13. The Swynnerton Plan & Report of EA Royal Commission.
14. No. 27 of 1959 and No. 28 of 1959.
15. Further discussions on land control and registration:
Bosire : The L.C.A. with specific ref. to Bogetutu Kioni, M.: The Socio-Economic & Cultural Implications of the Land Control Act.
- Both are dissertations.
16. 1891 AC 248 at 254.
17. 1963 : Kenya (Land Control) Transitional provisions.

CHAPTER TWO

THE REGULATION OF THE AGRICULTURAL LAND MARKET IN KENYA TODAY

1. CHARACTERISTICS OF THE AGRICULTURAL LAND MARKET AND JUSTIFICATION FOR CONTROL

It is important to see land rights as commodities which like chattels frequently change hands in the market place. Free enterprise economies, like the one we have in Kenya, encourage the rise of an active land market. It is also equally important to note that the rise and dynamics of the land market are functions of socio-economic, political and legal factors. The processes and methods of land alienation are little more than mere exchange relations in the market place.

The fact that our country is not blessed with any other natural resources has left agriculture as the backbone of the economy of this country. This explains why since the colonial era there has been scramble for land - everyone wanting to be an absolute proprietor of land. Land has therefore gradually become a scarce and expensive commodity. That is why dealing with land has become a sensitive issue and its market turned out to be very unique.

The struggle for absolute proprietorship has not been fruitless because it has received the blessings of the Registered Land Act¹ which confers on the registered land owner absolute proprietorship² and indefeasible title over land.³ This right in land is constitutionally backed by section 75 of the Kenyan constitution

which guarantees the protection of private property. Courts have also always protected absolute proprietorship as evidenced by a number of cases.⁴

Absolute proprietorship, as created by sections 27 and 28 of the Registered Land Act therefore confers the largest interest in land to a person to the exclusion of all others. This means that an absolute proprietor can use his land in any manner. It can also be interpreted to mean that this owner can even abuse his land by committing any waste on it, be it amilliorating, permissive, voluntary or equitable waste.⁵ But elsewhere in this chapter it has already been mentioned that land is our main source of production. If the government were to sit back and watch land being ~~was~~ wasted then we would have nothing else to depend on for our livelihood. This explains why the government has stepped in to see to it that land is properly used for purposes of economic development.

Even though this dissertation mainly aims at dealing with the control of alienation of agricultural land a general look at all other lands' control is necessary. Through many other Acts, lands which are not necessarily agricultural have been put under public control. The Agriculture Act⁶ gives the minister for Agriculture power to make reservation orders directing action to be taken by an owner of an agricultural land to preserve or develop his land. Should he refuse, the minister can cause the order to be carried out compulsorily. The minister can also make a management order against a mismanaged farm, causing it to be leased or sold.

For every transaction in agricultural land there must be consent from the appropriate land control board.¹⁵ All these transactions are therefore referred to as controlled transactions. and are specified in section 6(1) of the Land Control Act. They include transfers, leases, charges, exchanges, partitions or any such other disposals or dealings in agricultural land.

The words of the Act as regards transactions in land which have not been consented to by the boards are very clear. Any controlled transaction involving agricultural land is:-

"void for all purposes unless the land control board for the controlled area or divisions in which the land is situated has given its consent in respect of that transaction in accordance with the Act.¹⁶

3 EFFECTS OF CONTROLLED TRANSACTIONS

It is not only enough that the consent of the board must be obtained for any of the above transactions to be valid, but that consent must be obtained within six months from the date of the transaction.¹⁷ If the consent is not obtained for any reason whatsoever within the six months it will be void ab initio. This has caused hardships. There are cases where registered land owners disappear after an agreement of sale or lease of land before consent can be obtained. In most cases the buyer or leasee of land begins to develop the latter but later on there is deemed to have been no agreement because it lacked consent of the appropriate board. Decided cases show how the Act does not in any way protect parties that have suffered loss as a result of having entered such agreements.

In the case of Chemilil Sugar Company Ltd. v. Makonge Ltd.¹⁸ the appellants leased land from the respondents. For this lease, consent from the land control board was not obtained. When the leasee eventually refused to pay rent and was sued by the lessor, the trial court held that the contract was void because no consent had been obtained and therefore rent was not recoverable. On appeal it was also held that there was no basis for implying that there was an agreement because such an agreement fell short of consent, and even if the rent was recoverable, no interest could have been paid on it.

This case is a clear illustration of the fact that there are many problems that may arise if the parties fail to obtain consent.

Both the parties to a controlled transaction must sign the application for consent to the land control board. If the board does not grant its consent within six months from the time of the transaction then the transaction is still counted as void. This shows that it is not always a mistake only in the part of parties to a controlled transaction to be void. The Act should have also considered this problem and allowed the parties to apply to court for specific performance whenever the board delayed in granting such consent but this is impossible because specific performance cannot issue against the state as per the government proceedings (Act Chap.40 of the laws of Kenya).

The Act is silent about cases where consent has been granted for a lease and parties afterwards want to extend the lease. This is the issue that arose in the case of Principal Registrar v. Russel¹⁹

This was a lease for land with an option to purchase before the lease ended the lessee decided to exercise his option to purchase. Consent of the lease had been obtained and since the option to purchase was contained in the lease, the parties thought that it was not necessary to obtain consent for the option to purchase. But when in fact the whole transaction had been exercised and no consent was obtained within the time limit the option was held to be void. The court said that a fresh consent must have been sought.

The act should be reconstructed to provide for the fact that before consent is given the board should read through all the terms of a transaction so that parties do not go to the board more than once for the same transaction as in the case of Principal Registrar v. Russel.

During the debate on the Act²⁰ the more widely expressed view was that the act was meant to prevent whites from buying land in Kenya at will. This was even included in Section 9 of the Act which prohibits the granting of consent to any application by a foreigner or a company in which a foreigner has a share. But this has not worked and will not work so long as section 23 and 24 are still in existence. These sections give the President the power to exempt any dealing in land from the requirements of the Land Control Act. So if a foreigner or a company in which a foreigner has shares wants to buy land they can always go to the President and there will be no need of application for consent at all.

It is not even clear what type of companies the Act talks about. It only mentions private companies and co-operative societies.

Public company are widely used to mean companies that offer their shares to the public in general. A private company on the other hand does not invite share holders from the public generally but is quite choosy on who should buy shares. Most of the public companies in Kenya are those quoted in the stock exchange.

Thus in the case of a public company which owns land there is no requirement under the Act that it should obtain consent before any dealing in land. Given this blessing, a private company can decide to become Public, sell shares to its employees, buy them back and later turn to a private company again. This loop hole has not been plugged and up to now companies continue to do the same.

The problems that therefore arise out of the granting or not granting of consent should be reviewed so as to come up with a solution to the problems that have been brought up in the discussion in this chapter. In the next chapter the writer seeks to examine the need for a reform of the composition, powers and rules of the land control board. This will create abilities of coming up in the last chapter with possibilities of filling the gaps that have been left out by the Land Control Act, if these gaps are filled, then the government in reviewing the scope of the Act, will be able to achieve the ends the Act was meant to achieve.

FOOT-NOTES

1. Cap. 300 of the Laws of Kenya
2. Supra S.27.
3. Supra s.28.
4. See decisions in the cases of:
 - 1) Sarah Obiero v. Opiyo [1972] EA 227
 - 2) Esiroyo v. Esiroyo [1973] EA 388
5. The four types of waste as defined in English Jurisprudence:
 - Amilliorating Waste - Acts which improve the quality of land.
 - Permissive Waste - Acts of omission which improve the quality of land.
 - Voluntary Waste: - Positive acts to the detriment of land.
 - Equitable Waste - Destruction of land which no prudent owner can do i.e. very extreme.
6. Cap. 218 Laws of Kenya.
7. Land Planning Act (Cap.3030 - Kenya) Also governs Land in Townships.
8. Under the Land Acquisition Act, Cap. 295 Laws of Kenya.
9. Cap. 375 Laws of Kenya.
10. Cap. 376 Laws of Kenya.
12. S.2 Land Control Act.
13. Townships Act*
14. Trading Centres Act.
Note: The two Acts are now embodied in the Local Government Act (Cap.265 Laws of Kenya.
15. The composition, powers and discretions of the Land Control Boards are dealt with extensively in Chapter III
16. Supra s.6
17. Supra s. 8(i)
18. [1967] EA 166
19. [1972] EA 241
20. See: National Assembly Debates (1967) Cols.10-13 and 474 - 483.

CHAPTER THREE

ADMINISTRATION OF LAND CONTROL : THE LAND CONTROL BOARDS AND THE COURTS

To adequately administer land control the government, through section 21 of the Land Control Act establishes land control boards whose consent must be obtained before any controlled transaction on land is carried out. On the other hand the courts of law are usually resorted to where the interpretation of the law and some matters are concerned. Most of the matters that reach the courts do not challenge the decisions of the boards as such. In most cases one party denies the validity of a transaction for lack of consent of the boards. The courts have therefore tended to adhere strictly to the provisions of the Act.

In this chapter the writer tries to examine the part played by the land control boards and the courts in the adequate administration of land control.

COMPOSITION AND JURISDICTION OF THE LAND CONTROL BOARDS

The Land Control Act establishes land control boards at three levels, namely, the Divisional, Provincial, and Central land control boards, with the central land control board as the highest in the hierarchy. The divisional land control board is headed by the District Commissioner who is its Chairman. The District Commissioners usually delegate their powers to the District Officers who may act as their deputies or on their behalf. The board must also have two public officers who in practice are usually agricultural officers, two nominees of the County Council having jurisdiction over the areas of jurisdiction of the board. Also in this

board there must be between three and seven persons who are resident within the area of jurisdiction of the board.

The provincial board consists of the provincial Commissioner as its Chairman, not less than two public officers appointed by the Minister concerned and between two and five other people also appointed by the Minister. More than half of the members of the board must be people who own land.

The Central Land Control (Appeals) Board which is the final appellate body under the Act. Its Chairman is the Minister for Lands, with other members being the Minister for Economic Planning and Development, the Minister for Agriculture, Home Affairs Minister, the Minister of Culture and Social Services and the Attorney-General. The Central Land Control Board is therefore the final board and its decision cannot be questioned in any court of law. Whereas one cannot appeal to the courts against the decision of the Land Control Boards, it is still questionable as to whether one can apply to court for judicial review of the Boards' decision on matters of law and procedure. No such cases have arisen.

The decisions of the boards are always given in writing in a prescribed manner and must be signed by or on behalf of the Chairman. In the case of a refusal, reasons for that refusal must be given. The applicant is always furnished with a copy of the decision while another copy is sent to the Land Registry for records.

The composition of the Land Control Boards reflects a high administrative concentration and its link with Land Law. Apart from availing the board members with expert advice on land matters, before arriving at their decisions it also ensures that the policyming of the government is present at all levels of the transactions. It guarantees that all the decisions

conform to the wishes of the government as the administrators are responsible for the formulation, propagation and enforcement of government policy.

On the other hand, the way the Land Control Boards are constituted can be said to be a breach of the rule of law. It touches on the question of separation of powers in that the executive arm of the government in this case deals with matters which are more in the realm of law than in the realm of administration. One of the reasons the holders of power and land have given for this is that land is a politically sensitive issue and if the courts are left to deal with it they will lose the confidence of the people. They also argue that the courts are not conversant with reasons for which the Act was passed and so it was left to the experts to deal with it. Who the experts are and how they acquire their expertise has been left unexplained.

Landless citizens do not seem to have any say in the enforcement of the law concerning land control. The composition especially that of the provincial Land Control Board expressly requires that more than half of its members must be landowners. One could argue that those who own land are better placed to understand land problems. But even those who do not own land could also have been included in the decision-making so that they represent their brethren who do not own, but would like to buy or become leasees of some land. The fact that the landless are totally neglected will come out clearly in the next part of the chapter in which the reasons for refusal or granting consent to controlled transactions are discussed in some detail.

FACTORS WHICH THE BOARDS MUST TAKE INTO ACCOUNT IN THE
REFUSING OR GRANTING OF CONSENT

Through examining the factors that the boards bear in mind before granting or refusing consent to any transaction the objectives for which the Act was passed are clearly seen.¹ The major purpose of the Act, as mentioned again and again in every chapter of this paper is to ensure proper economic development of land. In the case of purchase of land the board must take into account the development, maintenance and good husbandry proposals that the buyer proposes for that land. If the board feels that the purchaser is not able to develop the land then the consent will not be given.²

The problem that arises is the question as to how one can determine that the proposed purchaser will actually develop the land or not. This is an arbitrary test because the board has no way of finding out if the purchaser eventually develops the land or not. This can only work if the Land Control Boards are given police power to follow up the purchaser and see to it that he has used his land as proposed. This will discourage people from buying land and leaving it fallow, and will also to a large extent discourage land speculation.

If a person has sufficient agricultural land the board will refuse consent for him to purchase any more land.³ This also has not worked as the Act has not put any ceiling to determine how much land each Kenyan should own. What is practical is that one can own as much land as he can afford and in most cases he owns the land even if he does not make any effort to develop that land. With this lack for a definition of the word "sufficient land" this test can be considered as a failure.

Section 9(ii) of the Act provides that if one is dealing in shares, then no consent will be granted if the person already has sufficient shares in the company. This measure is also a failure because the term "sufficient shares" is also not clearly defined. Furthermore the control only affects co-operatives and private companies and it is only when the company is going to buy land that the question of control comes in. But the transfer of shares per se is not a controlled transaction.

Another reason why the board may refuse consent to a transaction is spelt out in section 9(iii) as:

"If the terms of the transaction [including the price to be paid] are markedly unfair or disadvantageous to one of the parties to the transaction ..."

The board in this case is entitled to look at the price that is being paid. This provision was intended to prevent some unscrupulous individuals from exploiting the ignorant people in matters relating to land but it is one of the most widely abused provisions. In many cases the ^{Prices} prices may be understated in the application forms and in rare cases can it be overstated. Even though the Land Control offices have a system of determining the value of land by sending their valuers. The boards do not have their valuers to determine the value of the land in question.

The boards are also instructed to refuse consent in any case in which the land or share is to be disposed of by way of sale, transfer, charge or partition to a person who is not:

- (i) A citizen of Kenya
- (ii) A private company or co-operative society all of whose members are not citizens of Kenya.
- (iii) Group representatives incorporated, members of which are not Kenyans.

The main purpose of this provision was to stop foreigners from acquiring land in this country. This has not been done by the Act because the same Act provides that the president may, by notice in the gazette, prohibit any controlled transaction or any class of controlled transaction⁴. This applies both to citizens and non-citizens and even to companies whose members are non-citizens. So whereas the Act aims at making sure that non-citizens do not get land, these people are always at the mercy of the president and it is therefore not a wonder that despite the fact that there are many landless indigenous Kenyans, many foreigners still own land in Kenya.

In the case of subdivision of land, if that subdivision would result into uneconomic units or would reduce the productivity of the land then consent should be refused.⁵ The attitude of our ruling party towards land subdivision clearly came out when in 1963 it stated:

We cannot afford to fragment economic farms which are making a vital contribution to our national prosperity into producing little more than subsistence .."⁶

Although this attitude has found its way into the Land Control Act, the Act does not provide any criteria to be used by the Land Control Boards in determining when subdivision will result into uneconomical parcels of land. But in practice most boards base their decisions on an economic acreage unit which varies from one area to another. For purposes of clear discussions, the writer has chosen to adopt Bosire's definition of an economic acreage unit:

".... the area of land in a locality which at an assumed level of farm operation is thought to provide an average family a nominal income."7

It therefore follows that what is uneconomic will depend on the nature of the land. This means that it is the discretion of every Land Control Board in every locality to determine to what extent land in their area of jurisdiction can be subdivided so that it does not become uneconomic. The 1959 Land Control (Native Lands) Ordinance vested this jurisdiction only in the Provincial Land Control Boards. In practice today, the boards usually seek the opinion of agricultural officers as to whether the subdivision of a parcel of land will render it uneconomical.

Hardships have often arisen in cases where land subdivision has to be done according to customary law; whether it renders the land uneconomic or not. An example is a situation where a man dies leaving behind many wives. It is the right of every wife to have a share of the land. Similarly in a situation where a man has many sons, they each ought to get some of the land. Such cases have always arisen in highly populated areas like Vihiga in Western Province and Kisii District. In the case of Menwa s/o Akuya v. Tana Orina s/o Akuya and Gabriel Mokaya s/o Akuya.⁸ the eldest of the three brothers sought to exclude his two brothers from the land on the argument that the land was too small to support them all [the land in question was 156 x 49 paces]. The court rejected the argument and held that each of the brothers had equal rights to the land even though it was too small.

This is the first case where the court was called upon to decide on the issue of Land fragmentation. It is doubtful if the boards would consent to an application for subdivision of the land if section 3(a) of the Act is properly construed. This section excludes control on:

"The transmission of land by virtue of the will or intestacy of a deceased person, unless that transmission would result in the division of land into two or more parcels to be held under separate titles .."

For the reasons discussed above, the boards have exercised their discretionary power to refuse consent to certain transactions. No case has come up for judicial review concerning these reasons but all the same the courts have had their part to play in ensuring that the land control Act is enforced.

COURTS AND THE LAND CONTROL ACT

It has already been mentioned that the Land Control Act sets up Land Control Boards which are vested with absolute discretionary powers. It has also been clearly stated by the Act that the decisions of the boards are conclusive and binding. Therefore most cases that have landed in the courts are not for judicial review of the boards' decisions but all the same most of them revolve around section 6 of the Act which declares any of the controllable transactions⁹ as being:

"Void for all purposes unless the Land Control Board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act".

A look at decided cases has shown that most parties come to court seeking the following:

- 1) A decree of specific performance for the transfer of the land, or
- 2) A declaration that a transaction is null and void for want of consent, or
- 3) A declaration that the seller who refused transfer of land to the buyer holds it on trust for the latter.

In most of these cases the courts have had different views. Some members of the judiciary have been quite liberal so as to do justice but have strictly followed the provisions of the Act even if it would mean open injustice to one party. This can only be seen by looking at the relevant cases which will show clearly that land control has been a controversial subject in the courts which has not up to now been resolved.

The Act is completely silent on the question of compensation for improvements that could have been carried out on land that was acquired without consent of the board. It states that only the purchase price is recoverable, but this is possible if the Action is brought to court within six years as provided by the Limitation of Actions Act which states that:

"Actions brought on contracts may not be brought to court after the end of six years."¹⁰

So courts have also been equally unwilling to give compensation for improvements on land. This has not been the only area where the courts have given a blessing to the injustices created by the Act. Each case has come up with different facts and different decisions have been reached.

In the case of Joseph Kinuthia v. John Senewa Karura,¹¹ the parties had entered into an agreement for the sale of 10 acres of land situated at Ngong. After the payment of the agreed price the plaintiff took possession of the land and developed it considerably. But consent of the relevant Board was not sought within three months (the period stipulated as per that time). The plaintiff sought a decree of specific performance

or that the defendant should transfer the land to him. On relying on section 6(1) of the Act, Justice Trevellyn discussed the action but he noted:

"It seems to me that the Act can readily enough be used as an engine of injustice. In the instant case the plaintiff has been injured but he must loose ... were I not precluded from holding for the plaintiff I would have certainly awarded specific performance for the 10 acres".

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Here is a case where the judge regretted having decided the case as he did but he had nothing he could do because he had strictly to adhere to the provisions of the Act. Thus, were it not for the Act, he would have, for the sake of justice made an order for the defendant to transfer the land to the plaintiff, even though consent for this transaction had not been obtained.

Two years later in the case of Mobi Goko v. Chege Kibaki¹² the same judge remarked that:

"I do not think I can grant compensation for buildings since the agreement in question is declared by law to be absolutely void for all purposes."

In a later case Justice Muli was also confused on the issue of compensation with the consideration paid in exchange for the land. This was in the case of Njenga Gathama v. Karera Njuguna.¹³ In this case the plaintiff who was the registered proprietor of a piece of land, the subject matter of the dispute, had entered into an agreement for the sale of the land to the defendant. The parties never applied for the consent of the board. The defendant took possession of the land. The plaintiff sought a declaration from the court that the transaction had been null and void and an order for the defendant to vacate the land. Justice Muli

found for the plaintiff. He said that since consent was not obtained within the stipulated period under section 6(2) of the Act the agreement became null and void for want of consent and was therefore unenforceable in law, nor would section 3(2) of the Judicature Act¹⁴ avail the defendant as to uphold that would be repugnant to written law. He further observed that:

"The defendant is not entitled to a refund of the consideration he paid to the plaintiff."

The judge seems to have been unaware of section 7 of the Act. It was therefore left upon the defendant to decide on whether to sue on a civil debt or not. But if the defendant was not aware of this, then he must have lost even the price he paid- which must have been the case because no appeal was entered on this case anyway.

It is the writer's suggestion that the magistrates and judges should take the course of Justice Okubasu has taken¹⁵ so as to show openly that the Act is an instrument of injustice. All that the judiciary seems to be saying is that they are helpless and they have to decide cases according to the law as it is, however unjust it is. The bravery of justice Okubasu is well illustrated in the case of Wamarite Mwirikia v. Mata Wariyah.¹⁶ The plaintiff brought an action in the lower court praying for specific performance of a piece of land bought in 1967 and of which he took possession the following year. However, the defendant refused to transfer the land. In finding for the plaintiff and granting specific performance the magistrate Okubasu went at length to show how the provisions of the Act are harsh.

In considering the plight of the plaintiff, had he dismissed the action, is the magistrate observed that public policy must be considered and that it why the courts should not adopt and what he termed as "a blanket application

of a statute" without taking various points into consideration. Interviewed by a student of the University of Nairobi, in 1978 on his views about this issue, the magistrate stated:

"since the law is harsh, I invoke the maxims of equity to soften the law. A statute cannot be used as a cloak for fraud and that is what most people have sought to do. In deciding such cases I normally consider that at the time such parties were transacting, consent, if applied for, would it have been granted? If the answer is yes, then I assume that there was consent and decided the case on that on that basis."

On appeal the judgement of the lower court was set aside. Justice Chesoni noted that the doctrines of equity only apply where no other law apply. That the Land Control Act provides for the consequences of a transaction that was short of consent and therefore there was no room for equity. In trying to show further that the magistrate of the lower court was not going to undo the injustices caused by the provisions of the Land Control Act (which are very open) he said:

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"It was unnecessary for the learned magistrate to get entangled in the application of equity vis-a-vis the common law. It was wrong for the learned magistrate to purport to apply what he called the prevailing public policy and public opinion as a weapon for overruling a statute. At any rate there are no public opinion polls in Kenya and the learned magistrate has no way of finding out the public opinion on the matter. Even if he correctly defined public opinion on the point, such public opinion cannot overrule the statute. Courts administer and interpret the law, not public opinion"

At this point it seems as if the judge was implying that the courts are just to sit back and apply any law that is passed by parliament

Sometimes parliament passes laws such as the Land Control Act without foreseeing the problems that may arise in future. Such problems can only be realised when cases on that particular law appears in court. All the cases discussed so far show that the law concerning land control is harsh to the public and so it is upon the courts, through criticising this statute, who will speak on behalf of the public so that the legislators can consider its amendment. It is only in this way that the mischief caused by the Act can be removed.

There have, however been cases where some judges should be recommended for finding a way through which they could at least escape the harsh provisions of the Land Control Act. In the case of Mungai Mukiri v. James Njoroge and Samuel Mukiri¹⁷ the plaintiff and the first defendant entered into an agreement for the sale of land to the plaintiff. The plaintiff was given possession of the land, on which he built at a cost of 7,000 shillings. The first defendant refused to co-operate in applying for consent and hence the consent was never obtained from the Divisional Land Control Board. The plaintiff spent a total of approximately 14,000 shillings on development of the land. The first defendant later subdivided the land and sold one piece to the second defendant; both transactions being without consent of the board. The plaintiff filed an action for:

- 1) Declaration that the second defendant held the land on trust for the plaintiff, and
- 2) An order that the first defendant transfer land to the plaintiff.

Justice Muli presumed in favour of the plaintiff. He invoked section 3(2) of the Judicature Act and remarked:

"According to substantial justice, without regard to the technicalities of procedure, it is equitable that the plaintiff be awarded the disputed land which he bought through customary practices, this would not be inconsistent with any written law since the consent of the Divisional board is merely procedural requirement which the plaintiff was prevented from complying with by being kept in the dark."

This case illustrates the fact that the judges in the former cases merely refused to depart from the strict provisions of the Act. It is clear that a judge, in order to do justice, can always look for a way of helping the aggrieved party. In the former cases the judges appeared to have been too ready to encourage unjust enrichment.

Another case where section 3 of the Judicature Act was invoked to ensure that justice was done was that of Munana Kimani v. Wahathi Kimani and Kimani Wahathi¹⁸. In this case the original suit was an application before the District Magistrates' Court to determine heirs. The subject matter of inheritance was a piece of agricultural land in respect of which one of the heirs entered into an agreement of sale and in fact sold. The District Magistrate (and the Resident Magistrate on appeal) held that the appellant and the first respondent had denounced their right and the same should be registered in the name of the second respondent.

Justice Sachdeva upheld the decision of both lower courts though the ground of appeal to the high court was that the learned magistrate had erred and misdirected himself in law in not finding that the second since the second respondent based his claim on the sale agreement and since there was no sale transaction the sale was void. His lordship

held that the Application of the first respondent could seek refuge under the Land Control Act and to do so was tantamount to fraudulently backing out the commitments which the appellants had knowingly entered into. He added that the court would not countenance such attempts which clearly regarded the attempts of section 3 of the Judicature Act. Even though he had not invoked the Judicature Act in the same way as Justice Muli had done he however arrived at similar decision as Muli's.

So far, the courts are still confused as to what course they should take. The lower courts are not bound by each other's decisions. But still, even the high court judges, as seen from the cases considered above have not yet come up with a uniform precedent that can be followed by the lower courts. Each judge is still at liberty to decide a case before him as he deems fit. No case has gone as far as the Court of Appeal yet or else there could have been a possibility of getting an authoritative precedent. The Judiciary therefore still owes us a duty of helping us to reshape the Land Control Act to do justice.

FOOTNOTES

1. All spelt out in s.9 of the Land Control Act.
2. Supra S.9(a)(i)
3. Supra S.9(c)
4. Ss.23 & 24.
5. S.9(b)(iv)
6. 1963: Kanu Election Manifesto (Article 15)
7. Bosire: The Land Control Act /1967/ with Special reference to Bogetutu Division of Kisii District (Mimeo 1978) p.14.
8. In the Magistrates Court Kisii. Civil Case No.11 of 1967.
9. These transactions are specified in s.6(a) (b) and (c) of the Land Control Act.
10. Limitation of Actions Act
11. In the High Court of Kenya (Nairobi)
HCC Case No.404 of 1970.
12. K.H.C Digest No.65 of 1972.
13. K.H.C. Digest 32 of 1973.
14. Cap. 8 of Laws of Kenya.
15. He was then a District Magistrate.
16. HCCA 18/1975.
17. HCCA 248/1971.
18. HCCA 19/1975.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

It is to the knowledge of every Kenyan that land is a very important asset to our economy. This means that if problems concerning land are not properly dealt with then Kenyans would be putting their basic means of production at risk. This is what has led to the enactment of laws to govern land and to harmonize the conflicting interests over land. The Land Control Act which has been the major area of discussion in this dissertation is one of such laws. But this Act, as determined by the problems that have arisen from its enforcement, has not achieved the major aim of its legislators - to ensure that transactions in land are supervised so that land falls in the best hands that can utilize it for the benefit of the country's economy.

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The major problem that seems to have arisen due to the major Acts that govern the ownership, use and alienation of land can be connected to the fact that we do not have a strict land policy in Kenya. These Acts are only measures of experience that have been used to counter the problems as they arise. First and foremost of the writer's recommendations is the need for a land policy in Kenya. A land policy would be necessary whereby the government would set up future plans to make land available to the majority, if not all Kenyans. Unless Kenya sets up a land policy, land problems will continue to exist since land is not expanding and there are no plans to encounter such problems.

The Control of dealings in agricultural land is an area where land law has brought suffering to the public in the name of protecting the scarce

resource, land. This has been caused by the operation of the Land Control Act which is so rigid and does not put into consideration or does not give any remedies to any bona-fide dealers in agricultural land.

In this chapter therefore, the writer seeks to look at some areas of the Act that have been too harsh to the public and give possible recommendations that would move the law of control of alienation of agricultural land closer to the achievement of a goal that most Kenyans would be proud of.

For any transaction in agricultural land to be valid (except for those exempted by sections 6(3) and 24 of the Act) it must obtain consent of the appropriate land control board. The problems that have arisen out of the mere lack of consent are discussed in the second chapter. The period within which consent must be obtained has been set out to be six months and any delay leads to the transaction being null and void. The legislators did not put into consideration the fact that most Kenyas were in 1967, and are at present still illiterate, especially as far as land is concerned. Most of them are not aware of the existence of the Land Control Boards. Probably most of them also still believe that since they are the absolute proprietors of land, then they can dispose of it in any manner.

On the other hand there may exist these Kenyans who are aware of the provisions of the Land Control Act and may use delaying tactics in the obtaining of consent so that they can sell their land to many buyers at the same time. This problem is furthered by the fact that any party that buys or deals in land without the consent of the board will only get back purchase price and no more compensation for the developments that he has carried out on the land. All these have led to unjust enrichment by those who may pretend to be selling land.

If it were possible, the Act should be remodelled so that parties who have innocently entered into any dealing in land should be compensated for any development they could have carried out on the land. This should be more so because the most important aim of the Land Control Act is to see that land is properly used for purposes of economic development. The legislators should put into consideration the fact that the bulk of the Kenyan population is ignorant of the law and extend the time limit. In other words, in considering whether a transaction is valid, the major question should be : Has the land been adequately developed?

Another solution for this problem would be for the Act to provide that the courts award the remedy of specific performance to any party that deals in land without consent and the other party wants to deal with the land in a manner which would give him double profit. If this fraud is proved then the seller should be ordered by the court to pass the title to that land to the bona fide purchaser.

Another problem may arise where consent is applied for but the boards delay in granting it. The Act is silent on this and it seems as if the affected party is helpless since he cannot rely on the remedy of specific performance, thus forcing the government to grant the consent. This would be contrary to the government proceedings Act (Cap. 40 of the Laws of Kenya) which provides for the fact that specific performance cannot be issued against the state. The Act then should provide for an alternative remedy that can be awarded to the party that has suffered loss in such cases

The reasons that the boards take into account before granting or refusing consent are very vague. For instance, the Act does not define the "possession of adequate land" which should hinder one from obtaining consent of getting any more land. The Act should in the writer's opinion, allow for the publication of Notice to buy land and carry out an inquiry into knowing whether the public feels that whoever purports to buy land already has enough land.

It is not clear from the Act as to what criteria is used by the boards to determine if anybody who intends to possess land is capable of developing that land. The boards may tend to be biased on this issue because those who sit on it must either be from the public sector or at least own land within the jurisdiction of the board. This leaves out the landless people who in most cases are seen as having no funds to develop the land they intend to own.

Even after the boards have been assured that one is capable of developing land, the Act does not give the boards the supervisory powers of ensuring that this is done. The best way this would be done is that the Act should grant the boards police powers to follow up the owner of the land and check if he has used it in the suggested manner. Financial institutions should also work hand in hand with the Land Control Boards, not only to ensure that the broke farmers get money to develop their land, but that such money is not misused by the farmers for purposes other than those stated in the application for consent. This therefore suggests for a provision in the Act that one should, in the application for consent for a lease or sale of land, a party should indicate what steps he is going to take in developing the land.

The composition of the Land Control Boards should include lawyers who are more conversant with land law. These would act as legal advisors to the boards. An earlier draft of the land control bill advocated for an appellate tribunal of a lawyer and two assessors. But this was criticised by the commission on land consolidation under the chairmanship of J.S.D. Lawrence. The commission regarded that land was a paternalistic process requiring administrative knowledge rather than the application of judicial principles. It further argued that there was no need for a central appellate authority; that this was impractical because after all, the Minister's directives were similar to those formally issued in the non-scheduled (Africans) areas before independence. The commission saw this as having been sufficient enough to ensure uniformity of administration.

Another argument the commission put forward was that such directives of the Minister could also have required the local boards to take into account the relevant political considerations. No further explanation was given as to why the legal personell were completely put out of matters concerning land control.

Leaving the judiciary out of the whole process, the Act goes further to provide that the decisions of the Land Control Boards are final and conclusive and shall not be questioned in any court of law. This completely leaves out the important function of judicial review of administrative action, which would be necessary to probe into the decision of the land Control Boards.

The basic task of a court of law, or the High Court is to analyse the relation between the government and the governed. This is done through the examination of the powers vested upon the executive to determine whether there are any limits. Such are the instances where the courts assume a supervisory role of the administrative action, to determine whether the decisions arrived at by administrative tribunals are reasonable. The Land Control Boards are just like any other quasi-judicial bodies and so there should be a provision in the Act for judicial review of the reasonability of their decisions. Furthermore, the finality clause in section 8 of the Act should be repealed so that any party that is not satisfied with the decision of the Land Control Board can apply to the court for certiorari or any remedy that the court can award.

The fact that the decisions of the boards cannot be questioned in any court of law has made the courts to Act so rigidly on cases revolving around section 6 of the Act. The cases discussed in chapter 3 of this dissertation reveal that the courts see the Act as an instrument of gross injustice. But they admit that there is nothing they can do about it because they must apply the law as it is, however unjust it may be. They cannot dare take Lord Denning's approach of doing justice as public policy demands it because they would be going against the written law. Likewise they cannot apply the doctrines of equity because equity cannot be used to override a statute.

In view of the above, section 6 should be amended to read that all transactions lacking consent are voidable and not completely void. This would then allow the courts to apply the doctrines of equity in order to do justice to the parties. For example, where a party has already paid for land and gone ahead to develop it, justice can be done by applying the maxim :

"Equity sees as done that which
ought to have been done"

Thus, an agreement cannot be rendered void merely because it lacks consent.

The Land Control Act as a whole therefore needs to be amended. Almost every section of it has caused or may cause problems. Special areas to be considered are the question of consent, the jurisdiction and composition of the boards and the role that the courts play in enforcement of the provisions of the Act. If the recommendations in this chapter sail through then justice will not only be done, but it will also be seen to be done.

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- For other material see Introduction pp.1-3.

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