

**ANALYZING REAL ESTATE DEVELOPMENT AS A MODERN FORM OF TRAGEDY  
OF THE ANTI-COMMONS IN KENYA**

**BY**

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**DECLARATION**

This dissertation is my original work and has not been submitted for an award of degree in any other university.

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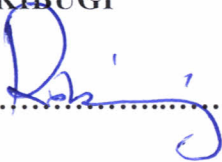
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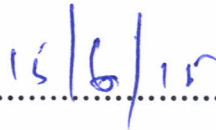
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## **DEDICATION**

This work is affectionately dedicated with total respect and appreciation to my beloved family.

## ACKNOWLEDGEMENT

I am grateful to God for the grace and providence to undertake my undergraduate course to completion and opportunity to have education.

This work could not have been possible without the wise counsel of my supervisor Dr. Robert Kibugi, I am grateful for your tutorship and constructive direction in writing this paper.

My parents who are my role models and source of inspiration have helped and assisted me psychologically, emotionally and financially throughout my undergraduate and other school years. To my mum, Mrs. Mary Gatimu for sparing time to read through my work, criticize and enrich it.

To my friends Karen Jiseve and Kefas Okaka for their support and criticism throughout my work.

## ABSTRACT

Real Estate development in Kenya has been on the rise since the year two thousand. It is expected that the laws governing real estate would come to force prior to the 21<sup>st</sup> century when real estate development begun in Kenya. However, this was not the case. Developers, begun to invest in real estate before neither the revision: nor the introduction of new laws that would govern the sector. Even the laws that regulated the sector were so many that the developers did not understand them and they complied with them just because it was a requirement. This also meant that they disregarded them when an opportunity arose. This has led to many substandard buildings and wrongful planning especially in Kenya. This is why in this research I have called the lack of properly coordinated laws that govern real estate, poor development in the real estate and lack of proper planning for example where you find funeral homes next to residential houses and houses built in places where roads are meant to be with an attempt to make profit on the part of real estate developers as the tragedy of the anti-commons which is basically a property regime in which owners hold effective rights to prohibit one another from utilizing a scarce resource. This research seeks to find away how this problem can be addressed so that we can have a proper real estate sector that is well managed in terms of planning and also profitable to the developers and the country at large. In this research, in chapter one ,I am going to use the capitalist school and , the radical school of free-market economy of **Robert Nozick** and in my theoretical framework I will use,**Race, Estate and uneven development** by Goham , **Urban Planning 1996** by Racliffe \$tubbs and an article by Kimani and Musungu (2010) , **Restructuring the Planning and Building Law and Regulations in Kenya for Sustainable Development** and **Keith Thomson's Development control; principles and practice**. In chapter two , I will critique the Kenyan legal provisons on real estate development and the implementation of the same. In chapter three, I will discuss how real estate development is a modern of tragedy of the anticommons in Kenya and how the same can be remedied. Finally in chapter four , I will give my recommendations and conclusion.

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## CHAPTER ONE

### 1.0 INTRODUCTION

This chapter includes the background information of the topic, statement of the problem, justification, research objectives, research questions, hypothesis, theoretical framework, research methodology and limitations

### 1.1 BACKGROUND

The term real estate although commonly used among the business class to mean development of buildings, buying and selling or renting land, buildings and housing, used legally<sup>1</sup> means property including the land and anything fixed, immovable, or permanently attached to it such as buildings, walls, fixtures, improvements, roads, trees, shrubs, fences, sewers, structures and utility systems.<sup>2</sup>

In Kenya, In 1980s, 1990s and early 2000<sup>3</sup>, there were challenges in the investment climate in the private sector. It does not mean that there were no players in the real estate sector, but the private sector environment was not very friendly. The situation improved with the election of the NARK Government which recognized that the private sector would provide the engine of driving the economy's growth and development through the commencing of the preparation of an Economic Recovery Strategy for wealth and Economic creation 2003-2007, whose key focus was reviving the economy, creation of employment and poverty elevation.

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<sup>1</sup> Black Law dictionary ( [the.legal.dictionary.org/real-estate/](http://the.legal.dictionary.org/real-estate/))

<sup>2</sup> Goddy & Hart 2003

<sup>3</sup> KEPSA, private sector Development in Kenya

In addition to this, after the election of the NARK government, there was good governance and increased levels of employment which encouraged investment in various sectors, among them the real estate sector. Also, according to Hass Consultant, increased rural-urban migration and high Diaspora remittance during the early and mid 2000s also led to increased investment in the real estate sector.

Real estate development began trending as a form of investment since the year 2000 and it even became more popular in the mid 2000s.<sup>4</sup> According to Francis Gachuhi Kamau in his article, *Residential Land Prices in Kenya Around Nairobi*<sup>5</sup>, the prices of residential land in high cost areas appreciated from 1 Million Kenya shillings in the year 2000 to 30 Million Kenya Shillings with a 30% appreciation per annum from the year 2000 to 2005 and an appreciation of 20 % per annum between 2005 to 2013. The middle cost land around Nairobi for example Kitengela, Kiambu, Ruiru and Juja, land appreciated from 300,000 Kenya Shillings per 1/8 of an acre in 2000 to 2.5 Million Kenya Shillings in 2013. This was an appreciation of about 30 % per annum from 2000 to 2005 and 25% per annum from 2005 to 2013. Architect Francis Kamau also points out that the current high land appreciation is beneficial to the individual real estate investors, architects, engineers but from a fiscal economics angle detrimental to the national economies.

It is crucial to note that the increasing investment in real estate is not the problem but rather it is the way the developments are being done. In Kenya, before a developer starts construction, they have to present the architectural plans for approval to the Nairobi City County if the development is within Nairobi County or the relevant county if they are out of Nairobi County.<sup>6</sup>

The development department is in charge of receiving the plan which it forwards to other

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<sup>4</sup> Hass Consultant

<sup>5</sup> <http://www.a4architech.com/2013/06/residential-land-price-appreciation-in-Kenya-around-nairobi200-2013/>

<sup>6</sup> [File:///f://Dealing with construction permits in Kenya-Doing Business world Bank Group.htm](File:///f://Dealing%20with%20construction%20permits%20in%20Kenya-Doing%20Business%20world%20Bank%20Group.htm)

departments of the county which are; the physical planning department, the road department, public health, fire department, water authority and electricity authority. Each department has to clear the respective section of the plans and grant separate permits for their respective departments. Secondly, the developer has to submit and obtain structural plan and approval and final building permit from the development control section.<sup>7</sup> Thirdly, they obtain a project form from an environmental expert which they submit to the National Environment Management Authority (NEMA)<sup>8</sup> for the approval of the environmental impact study. Finally, the developer applies for an occupancy certificate from the development control section which grants the certificate after conducting an inspection including other members from other departments like the public health department.<sup>9</sup> This procedure before starting a construction in Kenya is the position as at 2013 as researched by World Bank Group.

It is also important to point out that in the year 1996 a commission of inquiry to examine existing building laws was formed after the collapse of the Sunbeam building in Nairobi.<sup>10</sup> The committee's term of reference were to identify and review impediments to the current building regulations, legal and institutional arrangements in the building and construction industry and to promote institutional framework for achievement of sustainable well planned, safe and healthy built environment.

The committee identified fundamental weakness in the existing physical planning and building laws and regulations. They included disconnect in national and local physical plans, multiple physical planning institutions with no co-ordination and capacity, lack of mainstream mechanism

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<sup>7</sup> *Ibid* 5

<sup>8</sup> *Ibid* 5

<sup>9</sup> *Ibid* 5

<sup>10</sup> [Ktp://law.resource.org/pub/ke.building.2009](http://law.resource.org/pub/ke.building.2009).

for physical planning at national level such that planning precedes development , delay in plan preparations ,low priority in environment ,concern in development , weak and unclear enforcement mechanisms multiplicity of laws relating to the building sector , rigid and archaic laws and regulations .

In their recommendations, the committee recommended that the law should harmonize physical planning with building works, enhance accountability, professionalism and collaboration among professionals and other stakeholders in the building industry as a result of a stable and predictable real estate market.

However the recommendations of that committee were never adopted and Kenya continues to have a building code that has not yet been updated to suit the tropical climate. According to Prof. Robert Rukwaro a lecturer at The University of Nairobi, school of Architecture and Building Sciences, the building code has to be updated to suit the tropical climate in Kenya and not the temperate climate of the United Kingdom where it was adopted from.<sup>11</sup> He also goes further to state that looking at many towns in Kenya , it is evident that the code has failed as a physical development tool.

This poor coordination of laws and institutions that govern building in Kenya as pointed out by the committee<sup>12</sup> and lack of updated laws to govern the same leading to construction of substandard buildings is what is referred to as the tragedy of the anti-commons.

According to James .M. Buchaman and Yang. j. Yoon, in their article, *Symmetric Tragedies: Commons & Anticommons* , tragedy of the anticommons is when housing permits require the approval of several overlapping agencies , one of which can prevent construction . This is

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<sup>11</sup>[www.standardmedia.co.ke/article2000056052/current-building-code-fit-for-archives](http://www.standardmedia.co.ke/article2000056052/current-building-code-fit-for-archives)

<sup>12</sup> *Ibid* 9

because each of them has their own right to exercise and enforce. It could lead to a situation where a permit is given by one agency and denied by another.

The tragedy of the anticommons could also be looked at from another dimension. Architect Francis Kamau in his article,<sup>13</sup> points out that the high price of appreciation is beneficial to the individual real estate investors, architects, engineers but not from a fiscal economics angle detrimental to the national economics. This means that there is underutilization of resources meaning that real estate development does not realize its ultimate economic returns to the country. According to Hart (1998) in the legal and economic literature refer to the process of under using common resources as the tragedy of the anticommons.

This is why in this paper, the challenges in the real estate sector being caused by either poor coordination of the laws, institutions or by the uncontrolled maximization of profits by the players in the sector, the researcher refers to them as a modern tragedy of the anticommons.

The research seeks to analyze these challenges in the real estate sector as a tragedy of the anticommons and seek to give solutions on how the tragedy can be remedied.

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<sup>13</sup>ibid 3

## 1.2 STATEMENT OF THE PROBLEM

The increased investment in real estate development has been attributed to various factors according to Hass Consultants. These factors include rural-urban migration, the quest for Kenyans to own homes and increased Diaspora remittance.

However, the investment in real estate development is not making the expected economic returns. It is only benefiting the developers, engineers and architects.<sup>14</sup> But from a fiscal economies angle detrimental to the national economies. For instance, the contribution of real estate in the country's economy has faced decline in the past years.<sup>15</sup> In 2008, it contributed to 5.1% of total GDP, and in 2009 it reduced to 4.9 % of the GDP. In 2009 it reduced to 4.8% and in 2010 it fell to 4.5 %.

This can be attributed by various factors which include the poorly uncoordinated laws<sup>16</sup>, laws that have not been updated, disconnect in national and local physical plans, multiple physical planning institutions with no co-ordination and capacity, lack of mainstream mechanism for physical planning at national level such that planning precedes development, delay in plan preparations, low priority in environment, concern in development, weak and unclear enforcement mechanisms, multiplicity of laws relating to the building sector, rigid and archaic laws.

The building code which is responsible for controlling construction of buildings, according to experts<sup>17</sup> is not even a good building code since it does not suit the tropical climate in Kenya. This means that the building plans that are submitted to the county governments for approval

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<sup>14</sup> *ibid* 4

<sup>15</sup> *Hass Consultants, 2011*

<sup>16</sup> *Kimani & Msungu, 2010*

<sup>17</sup> *ibid* 10

despite them following the provisions of the building code, which is yet to be updated, are not the best.

Also, due to weak enforcement mechanisms of the existing laws, the developers continue to disregard the existing laws<sup>18</sup> in order to maximise on profit that comes from selling or renting out their developments to potential clients.

All these factors have led to collapsing of buildings, bursting of drainages and sewages and congestion in residential places<sup>19</sup> which makes it difficult for the relevant institutions to respond in times of disasters like fire outbreaks.

For Kenya to reap maximum gains from the real estate sector, it has to address the forgoing challenges so that it does not only benefit the direct investors, but the country's economy at large.

### **1.3 JUSTIFICATION OF THE STUDY**

Real estate development is very important for any growing economy like Kenya .However; it should be done properly so that the country reaps benefits from the real estate investments that have been made in the country.

Currently in Kenya, there are quite a number of laws that govern real estate development. They include; The Constitution , The Physical Planning Act, The Environmental Management and Co-ordination Act , County Government Act of 2012 , the Building Code and The Public Health Act . Some of these laws also have institutions that are formed under them whose responsibility is to implement the provisions in those laws.

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<sup>18</sup> *ibid* 10

<sup>19</sup> *ibid* 10

Also, poor pre-conditioning of real estate laws<sup>20</sup> has led to invention of new trends in the real estate development sector that were not governed by the current laws. This means that, most developers are developing buildings which are not in the current plan provided for in the law but are necessary in the current market trend.<sup>21</sup>

Secondly, I intend to come up with suggestions on how the challenges in the implementation of the said laws can be addressed.

Lastly, my research paper will address how revision and consolidation of laws governing the real estate sector so that there is one institution mandated with enforcement of the same. This will make compliance and inspection of the developments easier. Hence solving the tragedy of the anticommons in the sector, that has in part been contributed by multiplicity of institutions governing buildings.<sup>22</sup> While the other factor contributing to the tragedy of the anticommons is as discussed by SVEN VENNESTER, ALLALY VANHEIL, FRANCESCO PARISI AND BEN DEEPOTER, *Tragedy of anticommons*, they define the tragedy of the anticommons as a situation where private owners of property are only concern with maximization of profit from their property and they do not care whether the people owning property next to theirs are likely to suffer harm as a result of their activities on their property. This situation in Kenya is evident where building regulations in Kenya clearly provide that the space in front of any building should be at least 20 feet while the space at the side where opening are located should be eight feet, is one provision of the Building Code that is often broken in the informal sectors as pointed out by Prof. Robert Rukwaro, a lecturer at the University of Nairobi, School of Architecture and

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<sup>20</sup>ibid 13

<sup>21</sup>ibid 10

<sup>22</sup>James .M. Buchaman and Yang . j. Yoon , 2000) *Symetric Tragedies: commons and Anticommons*

Building Science, as most buildings in those areas sit cheek to cheek<sup>23</sup>. This is clearly a situation where developers develop their property without much consideration that if for example, their building got fire, the fire department will have problem accessing the area, leading to destruction of not only their building, but also the neighbouring buildings.

## **1.6 OBJECTIVES OF THE STUDY**

The objectives of this study are;

1. To analyse the laws that governs real estate development in Kenya and the challenges faced by various institutions and developers in their implementation.
2. To explain the scope of tragedy of the anti-commons and show how real estate development in Kenya is a tragedy of the anti-commons.
3. To show how a working development control system can help in solving the problem of the anti-commons in the real estate sector in Kenya.

## **1.5 RESEARCH QUESTIONS**

1. What are the challenges in the implementation of the laws governing the real estate sector and how can the problem be remedied?
2. How is real estate development in Kenya a modern form of tragedy of the anti-commons estate development in Kenya?
3. How can a working development control system help in solving the tragedy of the anticommons in the real estate development sector?

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<sup>23</sup> *ibid* 10

## **1.6 HYPOTHESIS**

The hypothesis of this study is that;

1. There is poor coordination and implementation of the laws governing the real estate sector in Kenya.
2. Real estate development in Kenya is a modern form of tragedy of the anti-commons
3. A proper working development control system can solve the problem of the anticommons in the real estate sector.

## **1.7 THEORETICAL FRAMEWORK**

In my theoretical framework, I will focus on two schools. Namely; the capitalist school and the radical free market theory of Robert Nozick .

### **Capitalist School**

In this school, I choose to look at Pierre Joseph Proudhon. He uses the word capitalism to refer to property owners. He argued that citizens should be allowed to own small scale property but not large scale because this would lead to the exploitation of the poor in this case the workers working for them.

Although the argument of many capitalist scholars is that in a capitalist economy, the doctrine of laissez-faire should prevail and that the government should let the market regulate its self through the invisible hand of supply and demand, Proudhon believes that as much as property owners own property with an intention of making profit, the government should regulate how people own that property and how they enjoy their property.

This school suits my research because forces of supply and demand should not be left to regulate private ownership of property. Poor preconditioning of laws would lead to the same impact (that of an unregulated market). It is therefore important for often review the law on real estate development.

Also, developers should not be guided by the demands by their clients. Instead, they should focus more on following the regulations put in place by the government. This will in the end protect the rights of other property owners and non-property owners.

### **The Radical Free-Market Philosophy of Robert Nozick**

Nozick <sup>24</sup> argues that the role of the government is to protect the right of its people to own property. He also argues that the government should only interfere only when the rights of other citizens are affected by the fact that another citizen is exercising their right. I chose this school of thought because developers have a right to own land in Kenya and develop it. This notwithstanding, they should not develop their land in a way that only benefits them in terms of profit while disregarding the general welfare of the people who neighbour their land.

## **1.8 LITERATURE REVIEW**

Real estate law is not developed in Kenya like in the UK and USA. So, it is obvious that there no texts on real estate law in Kenya. Despite this, there are articles on planning<sup>25</sup>. So, in my literature review, I am going to review books from the UK and USA where many real estate developers and real estate lawyers have written various books on real estate.

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<sup>24</sup>Nozick 1990

<sup>25</sup>ibid3

Gotham <sup>26</sup>in his book acknowledges that uneven development is destructive and unsustainable because it threatens the basic social systems and resources that are needed for human life and growth. Although his book is mainly on the underdeveloped areas where blacks in the USA live, I appreciate the fact that he appreciates the fact that sustainable development is the key if we want developments that serve the society. An example is a good sanitation and drainage system to cater for the current population in the area and the future population. Ratcliffe& Stubbs (1996) in his book, also has the same argument

According to Ratcliffe& Stubbs (1996) the growing intricacy and sophistication of the property development industry has led to the need for a deeper understanding of public policy, physical planning, municipal regulation and the market. Developers need not only to comply with the current building regulations but also consider the effect of future changes. For example, if the building is going to be completed over a long period, it is important to be open to the fact that the many things would have changed at that time for example the regulations. This is important because developers must aim to have sustainable buildings instead of buildings that only have the solution for the market demand at that time. In order to achieve that, they must mitigate various types of risks, including regulatory and obsolescence. He also encourages a mind shift among developers and their clients. He recommends that they focus on following regulations than only looking at the market. According to him, clients should look at that as an incentive as they buy the buildings.

I believe that this mind shift should be encouraged in Kenya. This can be achieved by educating the real estate developers and the public at large on the role of regulations in achieving sustainable development. This obviously will require more training of more experts in real estate

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<sup>26</sup>Gotham 2002

development. Sustainable development being one of the principles of development control is part of my research and I am glad that John gives ideas on how sustainable development can be achieved.

In the area of bulk regulations that regulate the real estate sector, thus making it very difficult for developers to comprehend the regulations, most of the authors do not seem to acknowledge that as a problem. For example in, *Practical real estate law pg. 78* the author believes that the local authority should be responsible for real estate developments. He further suggests that in the regulations, there should be a planning ordinance, a public health ordinance and an environmental ordinance. This is exactly what my research seeks to recommend should be done away with.

This notwithstanding, Kimani & Musungu (2010) in their article, make challenges that face planning in urban sectors is the multiplicity of institutions that are required to regulate planning. In my research, I am biased towards the real estate sector but I am going to use the same idea that Kimani & Musungu (2010) used. Although they suggested a common planning regulation, which could maybe be expected to cater for the real estate sector, I am inclined to suggest that real estate should have its own regulation instead of being included in a regulation that deal with other planning issues like roads, transport and recreation facilities.

## **1.9 RESEARCH METHODOLOGY**

The research paper contains information from various sources. Both primary and secondary data will be applied in carrying out this study. It will include primary documents such as the laws that govern real estate development. This for example includes the Constitution of Kenya and other statutory legislation that are relevant to real estate development in Kenya. Secondary sources

used will include books, journal article from the University of Nairobi library and internet sources. The study will be descriptive, analytical and prescriptive. It will involve a descriptive look at to the concept of real estate development as a tragedy of the anticommons in Kenya. The study will analyze the existing situation of real estate development and endeavour at prescribing solutions to the existing challenges.

#### **1.10 LIMITATION OF THE RESEARCH METHODOLOGY**

The study encountered the challenges in terms of research techniques which includes limited existing literature in the area of real estate development and the law.

## CHAPTER TWO

### A CRITIQUE ON THE LEGAL PROVISIONS ON REAL ESTATE DEVELOPMENT AND IMPLEMENTATION

#### 2.1 PRELIMINARIES

The Constitution of Kenya and other statutes, all provide for laws that are important in planning. These legislations include; County Government Act<sup>27</sup>, the Building Code, The Urban Areas and Cities Act<sup>28</sup> and the Environmental Management and Co-ordination Act<sup>29</sup>,

#### 2.2 KENYAN CONSTITUTION 2010

Article 66 (1) of the constitution provides that the state may regulate the use of any land or any interest in or right over any land in matters of public safety, public order, public health or land use planning. In article 66 (2), it also gives parliament the power to enact legislation ensuring that investments in property benefit local communities and their economies.

The key thing to note about these constitutional provisions is the use of the word may. This can be interpreted to mean that the government itself can regulate the use of land or any interest in land. Apart from the devolution of these services to the county government<sup>30</sup> by the constitution, the government should also task other bodies in the real estate sector like Architectural Association of Kenya, Engineers Board of Kenya and the National Construction Authority that have the technical expertise to assist in the implementation of this article. This is not to say that the county governments do not have employees with the required expertise to exercise police power. This will enhance the enforcement capacity of the County Governments.

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<sup>27</sup> Act No. 7 of 2012.

<sup>28</sup> Act No. 13 of 2011.

<sup>29</sup> Act No. 8 of 1999.

<sup>30</sup> Chapter 11 of the Constitution

## **2.6 COUNTY GOVERNMENT ACT (No. 7 of 2012) AND THE URBAN AREAS AND CITIES ACT (No. 13 of 2011)**

The purpose of combining these two legislations is because they are similar in their provisions on development planning. The only difference is the purpose for which they were enacted. The Urban Areas and Cities Act was enacted to give meaning to Article 184 of the 2010 Constitution<sup>31</sup>, to provide for the criteria of establishing urban areas and cities ; to provide for the principle of governance and participation of residents and for connected purposes.

While The County Government Act<sup>32</sup> was enacted in the year 2013 to give effect to Chapter Eleven of the Constitution; to provide for county governments' powers, functions and responsibilities to deliver services and for connected purposes. These Acts are in line with the 2010 constitution.

### **2.6.1 Provisions of the County Government Act**

For the purposes of this research paper, I am going to focus on Part XI of the County Government Act which has provisions on county planning. Section 102 provides the principles of planning and development facilitation. These principles will:

- Integrate national values in all processes and concepts
- Protect the right to self- fulfilment within the county communities and with responsibility to future generations

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<sup>31</sup> Article on Urban Areas and Cities

<sup>32</sup> Repealed the Local Government Act

- Protect and integrate rights and interest of minorities and marginalized groups and communities
- Protect and develop natural resources in a manner that aligns national and county government policies
- Align county financial and institutional resources to agreed policy objectives and programmes
- Engender effective resource mobilization for sustainable development
- Promote the pursuit of equity in resource allocation within the county
- Provide a platform for unifying planning budget financing , programme implementation and performance review
- Serve as a basis for engagement between county government and the citizenry, other stakeholders and interest groups

These principles are very critical because the county government Act , although its main objective was to enable a smooth transition into the devolved system of government , has provided for very critical principles like intergenerational equity , sustainable development and public participation.

This only means that the current physical planning Act is an outdated piece of legislation and it should have been revised at the same time that The County Government Act came to force. This would ensure that there is a good legal framework.

According to Nairobi City County<sup>33</sup> , the functions of physical planning and public health services have already been devolved to the counties. The county governments are in charge of

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<sup>33</sup>[www.nairobi.go.ke](http://www.nairobi.go.ke)

implementing the regulations on physical planning and public health using their relevant departments.<sup>34</sup>

However, there is need for the enactment of the Physical Planning Bill, 2014. This is very crucial because the County Government Act provides that the county regulations on physical planning should coordinate with those of the National Government. Although the current practise is that the county governments are making their own regulations on physical planning, the Physical Planning Bill should have come to force earlier to effectively address the problem of poor coordination of national and regional planning laws. The constitution also provides that where county laws and National Legislation conflicts, the National Legislation prevails over the county legislation if it applies uniformly within Kenya.<sup>35</sup> This means that if the planning and building laws are against those provided by the County Legislation are inconsistent with the National Legislation, that legislation will fail. This makes it crucial for the Physical Planning Act to be updated so that it is inline with the constitution and the County Government Act.

Section 111 (4) – (6) of the Act provides that city or municipal land use and building plans shall be binding on all public entities and private citizens operating within a particular city of municipality.

Also, city or municipal land use and building plans shall be the regulatory instruments for guiding and facilitating development within the particular city or municipal.

Finally, each city or municipal land use and building plan shall be reviewed every five years and the revisions approved by the respective county assemblies.

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<sup>34</sup> *Ibid* 5

<sup>35</sup> Article 191, Kenyan Constitution

These provisions are difficult to implement because the current Kenyan Building Code was revised in 2007. This means that if the city and municipal plans are supposed to follow the building plans, they have to be up to date but that is not the case.

For the County Development Act to achieve full implementation, both the Physical Planning Act and the Kenyan Building Code have to be updated so that it has meaning to the players in the real estate sector.

The Committee that was formed in 1996 to examine the existing building laws, suggested in its recommendation the physical planning Act and the Building Code should be consolidated into one Act and should be placed under one institution called the National Planning and Building Authority so that the challenge of the planning law being different from the building law is addressed by governing them under one institution. The committee believed that that would help stop construction and mushrooming of dangerous buildings.

This recommendation by the committee has not been adopted yet. Even in the Physical Planning Bill 2014 does not adopt that recommendation. Section 7 of the Bill provides for the National Physical Planning Council. There is no combination of the building laws and the physical planning law. According to the 1996 committee<sup>36</sup>, the only problem Kenya can solve its problem of poor quality buildings and challenges in planning is by combining the two statutes and making the building regulations relevant to Kenya's climate<sup>37</sup>. The harmonization of physical of physical planning and building works will harmonize physical planning and building works, enhance accountability, professionalism and collaboration among other stakeholders in

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<sup>36</sup> *ibid* 11

<sup>37</sup> *ibid* 10

the building industry and increased investment in the building industry as a result of a stable and predictable real estate market.

This multiplicity of agencies is what James.M. *Buchaman & Yang. J. Yoon*, in their article, call the problem of the anticommons. According to them, this challenge can be addressed by combining the agencies that deal with building and planning so that there is coordination. They further state that, this challenge could lead to situations where one agency grants a permit, and the other one rejects it. This can stop development or lead to a situation where the developers go on with the development of buildings anyway.

It is important to note that, the County Planning and Development Act<sup>38</sup> provides for city or municipal land use and building plans shall be the regulatory instruments for guiding and facilitating development within the particular city or municipal.

Even though there is no planning and building regulatory authority as suggested in the 1996 committee, at the county level, all departments that are concerned with planning and building are working together and the architectural plans after the approval by the relevant departments are all forwarded to the Technical Committee for the final approval.

This is an important step towards solving the problem of the anticommons in the real estate sector. The County Governments are the main regulatory authorities with regard to planning and building regulations. However, there is need to revise the existing Building Code so that it addresses the current building trends that are suitable for Kenya and the real estate market.

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<sup>38</sup>Section 111

Finally, it is important that the enforcement mechanisms are enhanced. It is important that the Act allows for public participation. That way the National Construction Authority has been brought on board to ensure that developers are adhering to the regulations by putting in place punitive measures for developers and other relevant professionals like engineers and architects who are flaunting the planning and building regulations

## **2.6.2 Provisions of the Urban Areas and Cities Act**

PART V of the Act is the part that provides for Integrated Development Planning. Section 36 (1) (d) (i), has one of the objectives of an integrated urban areas and cities development planning as preparation of environmental management plans and Section 36 (1) (d) (g) provides for another objective as to be the basis of development control.

These provisions are relevant in the real estate sector because it is critical in the realization of the principle of sustainable development. This is very important because it ensures the provision of good development plans that benefit the current generation and also ensure that the future generations will also have an opportunity to have their own development plans which will best suit them then.

Finally, Section 37 (1) provides that a city or urban area integrated development plan shall be aligned to the development plans and strategies of the county governments.

This forgoing provision , are in line with the provisions in the County Government Act in that they acknowledge that the county government have the power to come up with development plans which will be integrated with the National Government Plans, although the Physical Planning Bill 2014 has not come to force yet.

The challenge of lack of coordination between the National and Local Planning laws has been addressed by the current legislations, namely the County Government and Planning Act and the Urban Planning and Cities Act. They provide for a well coordinated planning and building system from the town level to the county level and finally to the national level. This organisation in the sector will encourage investment in the real estate sector that is safe and sustainable.

#### **2.4 ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT (EMCA) ,( No. 8 of 1999)**

This Act is relevant with regard to Environmental Impact Assessment test. This is provided for in section 58 (2) of the Act. It provides that the proponent of a project shall undertake or cause to be undertaken at his own expense an environmental impact assessment study and prepare a report thereof where the Authority, being satisfied, after studying the project report submitted under subsection (1), that the intended project may or is likely to have or will have a significant impact on the environment, so directs.

This section provides that no developer should go ahead with his real estate development plan without an environmental impact assessment (E.I.A) from the Authority. It does not matter whether they had gotten other permits from other authorities or other legal provisions<sup>39</sup>.

However, the Act does not provide for the consequences of not having an environmental impact assessment test. This is a situation where the Authority has the power to ensure sustainable development through proper management of the environment, but lacks enough

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<sup>39</sup> S 58 (1), EMCA

power to implement the same. Making it easy for developers in the informal sector ,to disregard this provision.<sup>40</sup>

It is only recently when NEMA started conducting periodic inspections during the construction. If new projects do not have an E.I.A, they may order the project to be abolished. However, the regulations are not clear on what category the regulations apply to<sup>41</sup>.

Moving forward, EMCA should be revised and different category of developments included and the type of developments regulated by section 58 (1) of EMCA be specified. This will make it easier for NEMA to carry out its implementation mandate.

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<sup>40</sup>*Ibid* 10

<sup>41</sup>*Ibid* 5

## CHAPTER THREE

### HOW IS REAL ESTATE IN KENYA A MODERN FORM OF TRAGEDY OF THE ANTICOMMONS AND HOW CAN THE PROBLEM BE REMEDIED?

#### 3.1 PRELIMINARIES

In this chapter, I am going to discuss the scope of tragedy of the anticommons as discussed by various scholars and how real estate development in Kenya qualifies to be an example of a modern tragedy of the anticommons. Finally I will discuss how a working development control system can help solve the problem of the anticommons.

#### 3.2 THE SCOPE OF TRAGEDY OF THE ANTICOMMONS AS DISCUSSED BY VARIOUS SCHOLARS

*SVEN VANNESTE, ALAIN VAN HIEL, FRANCESCO PARISI AND BEN DEPOOPTER in their article, From 'Tragedy' to 'Disaster': Welfare Effects of Commons and Anticommons Dilemmas*, social dilemmas can be defined by three core characteristics which are;

- A non cooperative choice is always more profitable to the individual than a cooperative choice, regardless of the cooperativeness of others.
- A non cooperative choice is always harmful to others compared to the cooperative choice.
- The aggregate amount of harm done to others by a non cooperative choice is greater than the individual's profit.

The above characteristics best explain the concept of the anticommons which was first introduced by *Michelman in 1982* and later popularized by *Heller in 1998*. Heller defined anticommons as a property regime in which two or more joint owners hold effective rights to prohibit one another from utilizing a scarce resource.

Under competitive conditions, each co-owner has incentives to block access to the common resource for other users. The use of the common resource by one party could yield net benefits because multiple holders of exclusion rights do not fully internalize the cost created by enforcing their rights to exclude others, the common resource will remain idle even in the economic region of positive marginal productivity.

Scholars like *Michelman (1982)*, *Heller (1998)* and *Heller & Eisenberg (1998)*, in their legal and economic literature refer to this process of under using common resources as the tragedy of the anticommons .

More specifically , *Heller & Eisenberg (1998)* stated that in solving the commons tragedy , privatization can go astray and unintentionally create a tragedy of the anticommons , provoking the underused of scarce resources because too many owners block access to the common resources.

For instance, in a study conducted by *SVEN VANNESTE, ALAIN VAN HIEL, FRANCESCO PARISI ANDBEN DEPOOPTER*, revealed that tragedy of the anticommons presents a greater social threat through underused from blocking the use of resources by posting very high selling prices because the owners are concerned with maximization of profits.

Basically, the prerogatives of an anticommons owners have are perceived as something that they own and psychological attitudes are triggered for protection of such entitlement. There is no sense of harm associated with one's exercise of the property right, even though others would suffer economic prejudice.

Most authors have viewed the tragedy of the anticommons as a new territory to be explored since the well-researched area is the tragedy of the commons which basically means that the net value

of the commonly used resource is related to the level to the level of complementary effort applied. Input here are separately controlled by choosing-acting agents , persons or firms , the value potential of the resource in question may , for example , be wasted in part and in total through excessive usage.

It is only in *James .M. Buchanan and Yang .j. Yoon*, article, *SYMMETRIC TRAGEDIES: COMMONS AND ANTICOMMONS*, where while giving an example of the anticommons , they give the bureaucratic barriers of residential construction . They further explain that that is why housing permits require the approval of several overlapping agencies, each of which can prevent construction. This is because each of them has their own rights to exercise and enforce. It could lead to situations where a permit is given by one agency then denied by another. This can be very expensive because where proper legal regulations fail in an economy hence bringing a stall in the housing sector<sup>42</sup>.

Using this example, it is also correct to state that real estate development could be an example of the tragedy of the anticommons. This is because developers have the right to exclude other people from accessing the property they are developing or have finished developing. This also means, since they have the right to exclude, they also have the right to use the property as they deem right and profitable to them. They can also hold on to the property until a time when they feel that they can make ultimate profit then sell the property which also includes transferring the exclusionary rights to the buyer of the property.

The developers in real estate development are only one party to real estate development. There are also other institutions that oversee real estate development that also reserve their own rights

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<sup>42</sup> The housing sector is part of the real estate sector

that are also exclusionary. Which, instead of being interdependent on each other, have functions that overlap. This means that one institutions can deny a permit to develop a permit while another institution allows the development to go on causing poor coordination which could bring about a situation where substandard buildings are developed because of poor coordination or where no development goes on at all. But since tragedy of the anticommons is a capitalist concept, the first scenario is the most likely.

### **3.3 HOW DOES REAL ESTATE DEVELOPMENT IN KENYA QUALIFY AS AN EXAMPLE OF A MODERN TRAGEDY OF ANTICOMMONS?**

The tragedy of the anticommons is lack of proper coordination of rights in private ownership. This can be solved by enactment and proper implementation of laws that address the issue of proper land use and development planning embracing the relevant principles of development control.

In Kenya, the principles of development control were first embraced after the enactment of the 2010 constitution but only in two pieces of legislation on real estate development<sup>43</sup> so far, the rest of the legislations<sup>44</sup> have not been updated so they do not embrace the relevant principles that are crucial in the coordination of the real estate sector.

According to Keith Thomas, the ideal practise of ensuring that there is proper implementation of regulations, the enforcement agencies should adopt a practice where instead of denying permits, they should grant development permits with conditions<sup>45</sup>. This will not only help in having standard buildings but also avoid a situation where there are illegal buildings being developed or

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<sup>43</sup> County Government Act § Urban Areas and Cities Act

<sup>44</sup> Physical Planning Act § Building Code

<sup>45</sup> Keith Thomas, *Development Control; Principles and practice*

a situation where there is no development going on which could be dangerous for a growing economy like Kenya.

In Kenya, what we have seen is the illegal developments. This has been caused not only by the lack of coordination of the laws governing the sector as I have illustrated above, but also by poor implementation of the same. When there is privatization of land, there is need for working legal and implementation system. It is also crucial that laws on development coordinate which is not the case in Kenya making the tragedy of the anticommons then evident

In addition to this ,when there is no room of involving the players in decision making , then go ahead to impose laws on them and thereafter reject their development plans<sup>46</sup> , they will go ahead with the development anyway because there is need to meet the demand for housing which introduces corruption between the developers and the people mandated by the law to ensure implementation or even if there is no corruption , the people mandated to implement the law are overwhelmed and are not able to inspect developments as they should. This failure in systems to coordinate private development is what is referred to as the tragedy of the anticommons.<sup>47</sup>

The tragedy of the anticommons can lead to underutilization of land and low economic gains from the same. For example, if there is poor coordination of the relevant laws, which leads to poor implementation, systems of development control fail and there is collapsing of buildings, bursting of sewerage systems and destruction of the environment. All this causes loss for the County Governments who need to repair and remedy the situation for the safety of the residents , and also loss of money because most of the downstream developers do not apply for permits from the County Government meaning that they are not able to charge them for the permits. This

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<sup>46</sup>Section 104(4) , County Government Act

<sup>47</sup>SVEN VANNESTE, ALAIN VAN HIEL, FRANCESCOPARISI ANDBEN DEPOOPTER

leads to a situation where there is rapid development of buildings, but the County Governments and the country at large is not benefiting.<sup>48</sup>

However, Kenyan legislation is beginning to take shape after the culmination of the 2010 Constitution. But there is still need for political will power for all the legislations that deal with the real estate development sector to be updated so that it can embrace the relevant principles and provide the necessary coordination in the legislation or even better, enact a single legislation on real estate to avoid so many legislations governing the same sector<sup>49</sup>. This will help in solving the tragedy of the anticommons in Kenya's real estate sector.

### **3.4 HOW A WELL WORKING DEVELOPMENT CONTROL SYSTEM CAN HELP SOLVE THE PROBLEM OF THE ANTICOMMONS IN KENYA'S REAL ESTATE SECTOR**

Development control is the process that regulates development and land use. This includes the construction of new buildings, the extension of existing ones and the change of use of buildings or land to another use.

As Keith Thomas explains in his book, *Development Control; Principles and Practice*, development control is basically a term used in Britain to define the system of issuing permits for land-use development.

Development Control is a very wide-ranging subject and can embrace all human endeavours as far as it expressed in the use of land:

In order to comprehensively understand the scope of development control, it is important to discuss the purposes and characteristic of development control.

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<sup>48</sup>Hass Consultant 2010

<sup>49</sup>James .M. Buchanan and Yang .j. Yoon, article, *SYMMETRIC TRAGEDIES: COMMONS AND ANTICOMMONS*

The main purpose of the development control system is to ensure efficient and effective land use in public interest. It is also possible to divide the general purpose of development control to “people purposes” and “property purposes”.

### *People Purposes*

A prime people purpose is to satisfy the social and economic aspirations of the citizenry, as far as they are expressed through land use. Thus, the decision-makers in the development control system will normally react positively to proposals to develop. However, there may be good planning reasons why development should be refused.

In a properly working development control system, owners of land and real property look up to the development control system to protect them. It seeks to protect ordinary citizen from the powerful and mighty.

### *Property purposes*

The coordination of investment in land and buildings is very important in a good development control system. Although land and buildings are in much ownership, each plot and each activity forms part of a working system, a working whole.

In making development control decisions, the planning authority has to ensure as far as possible that developments in one part of a system are not grossly out of synchronization with others. It is particularly important that road and sewerage infrastructure is of adequate capacity and that public open space, say, is of adequate standard to cater for new developments.

In addition to this, decision makers must make sure that development works in a functional sense. Also, they must ensure that development is visually pleasing. This achieved by enhancing environmental quality which is a purpose embracing both functional and aesthetic considerations.

The people and property purposes of development control and the methods of implementation are close and interactive. The purposes are implemented in part by decisions to refuse or grant planning permission and in part by enforcement action against unauthorized development.

Thus, one of the purposes of development control system is to facilitate decision-making by a clear process.

Another purpose of development control system is to ensure that that the supporting information is utilized (especially development plans because it helps to fulfil the vision of the county and country in the Kenyan context).

Having defined what development control is and the advantages of the same, it is then important to explain development control in the Kenyan system, and make recommendations on how development control system can be improved in Kenya to improve planning with relation to the real estate sector.

Firstly , there is need to consider whether the development control system under the County and National planning Acts adequately meets current needs and advise on the lines along which it might be improved , bearing in mind the forthcoming redistribution of planning functions between local authorities and the new system of structure and local plans<sup>50</sup>.

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<sup>50</sup> Christopher j,Duerksen , Dobry on development control in England

On the forgoing point, Kenya has made steps in improving her laws on planning. But the problem still remains poor coordination of the legislations that govern land use and planning which in turn affects the real estate sector. For example , the County Government Act although politically motivated , came to force repealing the Local Government Act while the Physical Planning Act is still in the previous era and the Physical Planning Bill is yet to come to force. This means that with the county legislation having adopted development control while the legislation governing national planning has not, implementation becomes difficult.

The County Government Act provides for planning in the county. It provides that a county planning unit shall be responsible for coordinating integrated development planning within the county, ensuring integrated planning within the county, ensuring linkages between the national planning framework, ensuring meaningful engagement of citizens in the planning process, ensuring the collection, collation, storage and updating of data and information suitable for the planning process and ensuring a GIS based database system.<sup>51</sup> It also provides that the designated planning authority in the county shall appropriately organize the effective implementation of the planning function within the county.

In addition to this, the Act provides for the integration of national and county planning<sup>52</sup>.It provides for the cooperation in planning shall be undertaken in the context of the law governing inter-governmental relations. Also, county plans shall be based on the functions of the county governments as specified in the Fourth Schedule to the Constitution and on relevant national policies. In addition to this, on planning<sup>53</sup> , there shall be a five year county integrated

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<sup>51</sup> Means a geographical information management system that integrates hardware ,software and data for capturing , managing , analyzing and displaying forms of geographically referenced information

<sup>52</sup> Section 106 , County Government Act

<sup>53</sup> Section 108 , County Government Act

development plan for each county which shall have clear goals and objectives, an implementation plan with clear outcomes, provisions for monitoring and evaluation and clear reporting mechanisms. Finally, on planning,<sup>54</sup> the Act provides that each city and municipality there shall be the following plans<sup>54</sup> –

- City or municipal land use plans
- City or municipal building and zoning plans
- City or urban area building and zoning plans
- Location of recreational areas and public facilities

A city or municipal plans shall be the instrument for development facilitation and development control within the respective city or municipality. The plan within the particular city or municipality, shall provide for<sup>55</sup>-

- Functions and principles of land use and building plans
- Location of various types of infrastructure within the city or municipality
- Development control in the city or municipality within the national housing and building code framework

City or municipal land use and building plans shall be binding on all public entities on all public entities and private citizens operating within the particular city or municipality<sup>56</sup>.

Each city or municipal land use and building plans shall be the reviewed every five years and revisions approved by the respective county assemblies<sup>57</sup>.

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<sup>54</sup> Section 111 (1), County Government ACT

<sup>55</sup> Section 111 (3), County Government Act

<sup>56</sup> Section 111(4), County Government Act.

<sup>57</sup> Section 111(6), County Government Act.

All these provisions of the County Government Act are crucial to the attainment of a good development control system but they alone cannot help attain it if the county legislation is not integrated to the national legislation<sup>58</sup>. The physical planning Act has to be revised to include concepts like public participation in planning matters which is very crucial in a good development control system just like the County Government Act.

Secondly, there is need for the introduction of an appeal system that does not only rule on the rejection of building plans but gives approvals with conditions. Currently, decisions the County Government Act gives the power to review the county plans and to make implementations to the development plans to the respective county assembly of each county. This adoption of the development control system in Kenya is a great achievement but there is need for implementation which will only be possible with the enactment of the physical planning bill into law.

Lastly, the principle of sustainable development is very crucial in the achievement of a good development control system. Sustainability is almost the main purpose for which development control is adopted.<sup>59</sup> The current generation must use the land for their need and the same land should also be used by the future generations for their needs at that time. This means that in making development control decisions, the planning authority has to ensure as far as possible that developments in one part of a system are not grossly out of synchronization with others. It is particularly important that road and sewerage infrastructure is of adequate capacity and that public open space, say, is of adequate standard to cater for new developments. This means that there is a problem in the Kenyan development control system. This is evident in areas where

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<sup>58</sup>Physical Planning Act.

<sup>59</sup>David .G. Victor , *Recovering sustainable development*

sewages and drainages burst especially during the rainy seasons. This means that development of buildings in some areas goes on without adequate planning in terms of infrastructure. For instance, there should be an expansion of the drainage systems before permits are issued for development of more buildings in an area. There should also be development buildings that will be adequate in fulfilling their development needs then.

Also, sustainability helps conserve the environment. Development of buildings should never be done at the expense of the environment. A development control system should have measures to conserve the environment. For instance, a working environmental Impact Assessments (EIAS) in real development does help in making developments that do not cause environmental pollution both in the short term and in the long run.

## CHAPTER FOUR

### CONCLUSION AND RECOMMENDATIONS

#### 4.1 RECOMMENDATIONS

What causes tragedy of the commons is not privatization of ownership but the lack of coordination exercising the rights to private property by co-owners. Having stated this, it is important to acknowledge the steps that Kenya has taken so far in its planning laws which also to a large extent affect the real estate sector.

However, it will be important to point out that although there is need for some of the laws on real estate to be updated<sup>60</sup>, it would even be better if there was a consolidation of all these laws to come up with only one legislation<sup>61</sup>. This will improve implementation and understanding of the law by all stakeholders.

Secondly, in that legislation, there should be a provision on a meaningful development control system. A system that embraces in a practical sense all the principles of development control discussed in chapter three of this paper. Meaningful means a development control system that all stakeholders have been involved in and not imposed on them. Also, it should be sustainable so that present and future generation's can both benefit<sup>62</sup>. The contribution of those stakeholders must also be seen to be incorporated in the building plans for example. Austin (1869),<sup>63</sup>

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<sup>60</sup>Physical Planning Act & the Building Code

<sup>61</sup>Kimani and Msungu ;Reform Restructuring the planning and building Law and Regulations in Kenya for sustainable Development

<sup>62</sup>Gotham, K (2002), Race, Real Estate and Uneven Development, Albany State University Of New York Press

<sup>63</sup>Austin, J., Campbell, R., & Austin, S. (1869). *Lectures on jurisprudence, or, The philosophy of positive law*. London: J. Murray

Finally, in terms of implementation, the laws should focus more on giving development permits with conditions but not denying the permit completely. So far, there is no Kenyan law that has this approach<sup>64</sup>. This encouraged construction of standard buildings that have followed the legal regulations because the opinion of the developer has been taken to account and has not been rejected in whole<sup>65</sup>. Also, it will be easy for the relevant institutions to exercise police power and corruption will also reduce. Thomas, K. (1997).

#### 4.1.2 CONCLUSION

In conclusion, according to Hart's positivist school of law, a good law is based on understanding and not merely action. It is not merely the meaning of those actions but the meaning that those actions have to the participants. As I observed earlier, the laws that govern real estate development, have two eras which is the era before the 2010 constitution and the era after the 2010 Constitution.

However, the problem comes about where there are still very critical laws that have not yet been revised to accommodate the new era. This is likely to bring about challenges when it comes to implementation because all the laws governing real estate are interdependent. For example for the Urban Areas and Cities Act and the County Development Act to be fully implemented a new Physical Development Act has to be enacted and the current one repealed.

Also, public participation is very important when it comes to making of laws. This ensures that all stakeholders are involved in coming up with development plans that they understand and appreciate hence making it easier for them to implement.

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<sup>64</sup> *Ibid*

<sup>65</sup> McAUSLAN J.P.W. B (1982). *Discretion and Development Control*

In addition to this as Gotham<sup>66</sup> acknowledges in his book that uneven development is destructive and unsustainable because it threatens the basic social systems that are needed for human life and growth, it is therefore important that the legal framework provides for the principles of sustainable development and development control. Fair enough ,the 2010 constitution is a progressive law and the statutes that have been enacted in its regime are progressive as well. However most of the statutes that have been enacted in this regimes have been enacted for political reasons and there was no further consideration as to whether they were interdependent with other statutes hence making it difficult to implement them.<sup>67</sup>

Finally in relation to the real estate sector, I believe that there is need to come up with a Real Estate Development Law<sup>68</sup> which exclusively deals with the planning and development of buildings. This will enable the real estate developers understand the law that governs them and also the institution concerned which I also recommend that it should be provided for in the law. Most importantly, the developers and all the relevant stakeholders should be involved in making of the law and their recommendations embraced. This will make it easy for implementation.

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<sup>66</sup> *ibid*

<sup>67</sup> *Physical Planning Bill 2014 is yet to be enacted*

<sup>68</sup> Kimani and Msungu ;Reform Restructuring the planning and building Law and Regulations in Kenya for sustainable Development

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## Appendix I Declaration Form for Students

### UNIVERSITY OF NAIROBI

#### Declaration of Originality Form

This form must be completed and signed for all works submitted to the University for examination.

Name of Student	<u>KATHI MARGARET KIAMUTIRI</u>
Registration Number	<u>6341401371011</u>
College	<u>HUMANITIES</u>
Faculty/School/Institute	<u>SOCIAL SCIENCES &amp; HUMANITIES</u>
Department	<u>LAW</u>
Course Name	<u>RESEARCH PAPER</u>
Title of the Work	<u>ANALYZING REAL ESTATE DEVELOPMENT AS A MODERN FORM OF TRAGEDY OF ANTICOMMONS</u>

#### DECLARATION

1. I understand what Plagiarism is and I am aware of the University's policy in this regard
2. I declare that this Project (Thesis, project, essay, assignment, paper, report, etc) is my original work and has not been submitted elsewhere for examination, award of a degree or publication. Where other people's work or my own work has been used, this has properly been acknowledged and referenced in accordance with the University of Nairobi's requirements.
3. I have not sought or used the services of any professional agencies to produce this work
4. I have not allowed, and shall not allow anyone to copy my work with the intention of passing it off as his/her own work
5. I understand that any false claim in respect of this work shall result in disciplinary action, in accordance with University Plagiarism Policy

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