Examining the Impacts of Compulsory Land Acquisition on Mortgage Holders and Tenants: Challenges and Legal Implications

Susan Mathias Mnafe

Publication Date: 2025/10/04

Abstract: This paper examines the significant challenges faced by mortgage holders and tenants during compulsory land acquisition processes in Tanzania. Compulsory land acquisition, as defined under Tanzanian law, allows the government to acquire land for public purposes, which often leads to the termination of rights of occupancy and the interests of third parties, including mortgages and leases. The study employs a doctrinal and documentary review methodology to analyze relevant legislation and literature, aiming to uncover the inadequacies in existing legal provisions that fail to adequately protect the rights of mortgagees and tenants regarding compensation during such acquisitions. The legal framework governing land acquisition in Tanzania primarily focuses on holders of rights of occupancy while largely neglecting the rights of mortgage holders and tenants.

The Land Acquisition Act empowers the President to acquire land, but it does not explicitly address how third-party interests are treated during this process. As a result, mortgagees and tenants often find themselves without recourse when their interests are extinguished without appropriate compensation. This oversight creates significant vulnerabilities for these stakeholders, who may lose their investments and housing without any legal recognition or financial redress. To address these challenges, the paper recommends critical amendments to existing laws to ensure that third-party interests, particularly those of mortgage holders and tenants, are recognized and compensated during compulsory land acquisitions. By establishing clear guidelines for compensation eligibility and enhancing legal protections for these groups, Tanzania can foster a more equitable land acquisition process that respects the rights of all affected parties. Ultimately, this study highlights the urgent need for legal reforms that will provide greater security and fairness for mortgage holders and tenants in Tanzania's evolving land tenure landscape.

Keywords: *Compulsory Land Acquisition, Mortgage Holders, Tenants' Rights, Compensation.*

How to Cite: Susan Mathias Mnafe (2025) Examining the Impacts of Compulsory Land Acquisition on Mortgage Holders and Tenants: Challenges and Legal Implications. *International Journal of Innovative Science and Research Technology* 10(9) 2435-2439. https://doi.org/10.38124/ijisrt/25sep1156

I. INTRODUCTION

Compulsory land acquisition is a significant government power exercised for public purposes, often resulting in the displacement of individuals with vested interests in the land, such as mortgage holders and tenants. In Tanzania, the legal framework governing this process is primarily outlined in the Land Acquisition Act, which grants the President the authority to acquire land deemed necessary for public use. However, this power can lead to the extinction of various third-party interests, including mortgages and leases, without adequate compensation. This paper aims to explore how Tanzanian law recognizes and compensates these third-party interests during compulsory acquisitions, highlighting the gaps and inadequacies that exist within the current legal provisions.

The complexities surrounding compulsory land acquisition are further compounded by the fact that while mortgage holders and tenants possess proprietary interests in land, the existing laws predominantly focus on holders of rights of occupancy. As a result, mortgagees and tenants often find themselves inadequately protected during acquisition processes. The Land Act defines mortgages and leases as legitimate interests arising from rights of occupancy; however, these interests are not sufficiently addressed when land is acquired for public purposes. This oversight raises critical questions about the eligibility for compensation and the legal recognition of third-party interests in such scenarios. This study employs a documentary review and doctrinal approach to analyze relevant legislation and literature, aiming to identify specific gaps in Tanzanian law regarding the treatment of mortgagees and tenants during compulsory land acquisition. By examining current practices and legal frameworks, this paper seeks to provide recommendations for necessary amendments to ensure that third-party interests are adequately recognized and compensated. Ultimately, addressing these challenges is essential for fostering a more equitable land acquisition process that respects the rights of all affected parties.

ISSN No: -2456-2165 https://doi.org/10.38124/ijisrt/25sep1156

II. OVERVIEW OF COMPULSORY LAND ACQUISITION

Compulsory land acquisition is a legal power exercised by governments to acquire private land without the owner's consent for public purposes, as outlined in the Land Acquisition Act. This process is often justified on the grounds of societal benefit, allowing the government to undertake various projects such as infrastructure development, housing, and public services. However, the implications of compulsory acquisition extend beyond mere land transfer; they often lead to the displacement of individuals who hold vested interests in the land, including mortgage holders and tenants. This section will delve into the historical context of compulsory land acquisition in Tanzania, tracing its roots from colonial legislation to contemporary practices that continue to shape land tenure and rights.

Historically, compulsory land acquisition in Tanzania has been influenced by colonial legal frameworks that established the foundation for current laws. The Land Acquisition Ordinance of 1926 marked a significant point in this evolution, allowing the government to acquire land for public use while providing little consideration for third-party interests. Over time, amendments have broadened the definition of "public purpose," enabling more extensive government powers in land acquisition. These changes have often occurred without sufficient regard for the rights of mortgagees and tenants, who may find their interests overlooked or inadequately compensated during the acquisition process. This historical backdrop underscores the need for a critical examination of how current laws address or fail to address these third-party interests.

In light of these historical influences, it is essential to analyze how Tanzanian law currently treats third-party interests in the context of compulsory land acquisition. While mortgage holders and tenants possess legally recognized rights, their status during compulsory acquisitions remains precarious. The existing legal framework primarily protects holders of rights of occupancy, often neglecting the rights of those with mortgages or leases. This oversight raises significant questions about compensation eligibility and legal protections for these stakeholders during compulsory acquisitions. As this paper progresses, it will explore these issues in depth, aiming to highlight gaps in the current legal provisions and propose necessary reforms to ensure fair treatment for all parties involved in compulsory land acquisition processes.

III. LEGAL FRAMEWORK

The legal framework governing compulsory land acquisition in Tanzania is primarily established through several key statutes, including the Land Acquisition Act (Cap 118), the Land Act (Cap 113), and the Village Land Act (Cap 114). The Land Acquisition Act empowers the President to acquire land for public purposes, which encompasses a broad range of activities, such as infrastructure development, agricultural projects, and urban planning. Public purpose is defined in Section 4 of the Act to include uses that benefit the general populace, such as housing, sanitation improvements, and industrial development. However, this expansive definition raises concerns regarding the treatment of mortgage holders and tenants, as their interests may be overlooked during the acquisition process, leading to significant implications for their rights and compensation eligibility

Under the Land Act, mortgages and leases are recognized as legitimate interests derived from rights of occupancy. Specifically, Section 113(1) allows for the creation of mortgages from rights of occupancy or leases, thereby establishing a legal basis for these interests. Despite this recognition, the existing legal framework tends to prioritize the rights of holders of rights of occupancy over those of mortgagees and tenants. When land is acquired compulsorily, the rights associated with mortgages and leases are often extinguished without adequate consideration for the financial investments made by mortgage holders or the living arrangements of tenants. This oversight highlights a critical gap in the legal provisions that govern compulsory land acquisition in Tanzania.

The implications of this legal framework are profound for mortgage holders and tenants. While they possess proprietary interests in land, their rights are not sufficiently protected during compulsory acquisitions. The current laws do not explicitly address their eligibility for compensation, leaving them vulnerable to loss without recourse. This situation calls for urgent reforms to ensure that third-party interests are adequately recognized and compensated in the context of compulsory land acquisition. By amending existing legislation to include specific protections for mortgagees and tenants, Tanzania can create a more equitable framework that safeguards the rights of all stakeholders involved in land acquisition processes.

IV. THIRD-PARTY INTERESTS: MORTGAGES AND LEASES

In Tanzanian land law, third-party interests primarily encompass mortgages and leases, which are significant forms of land rights derived from the right of occupancy. Mortgages, as defined under Section 2 of the Land Act (Cap 113), represent an interest in a right of occupancy or lease that secures the payment of a debt or the fulfillment of certain obligations. This arrangement creates a legal relationship between the mortgagor and the mortgagee, allowing the mortgagee to enforce their interest in the event of default. Consequently, mortgages serve as critical financial instruments that facilitate access to capital for property owners, but they also introduce complexities during compulsory land acquisition processes, where the rights associated with these interests may be disregarded.

Leases, on the other hand, are defined in Section 78(1) of the Land Act as agreements that provide exclusive possession rights to tenants for a specified duration. This legal framework grants tenants a proprietary interest in the leased property, enabling them to enjoy and utilize the land while also imposing certain responsibilities. Tenants have the right

ISSN No: -2456-2165 https://doi.org/10.38124/ijisrt/25sep1156

to take legal action against any interference with their enjoyment of the leased premises, thereby reinforcing their position as legitimate stakeholders in land use. However, during compulsory land acquisitions, tenants often face challenges as their rights may not be adequately recognized or compensated, leading to potential displacement and loss of livelihood.

The implications of these third-party interests become particularly pronounced during compulsory land acquisition processes in Tanzania. While both mortgage holders and tenants have established legal rights, the current legal framework tends to prioritize the interests of holders of rights of occupancy over those of third parties. This oversight raises critical questions regarding compensation eligibility and legal protections for mortgagees and tenants when their interests are extinguished without due consideration. As such, there is an urgent need for legal reforms that explicitly address these issues and ensure that all stakeholders are fairly compensated and protected during compulsory land acquisitions, thereby fostering a more equitable land tenure system in Tanzania.

V. CHALLENGES FACED BY MORTGAGE HOLDERS

Mortgage holders and tenants face significant challenges during compulsory land acquisitions in Tanzania, primarily stemming from a lack of adequate legal protections and compensation mechanisms. One of the most pressing issues is the lack of compensation, as mortgagees often find themselves without any financial recourse despite their substantial investments in the property. When land is acquired for public purposes, the law typically prioritizes the rights of holders of rights of occupancy, leaving mortgage holders vulnerable to losing their financial interests without any form of compensation. This situation is exacerbated by the legal ambiguities present in Tanzanian land law, which does not clearly define the rights of mortgagees and tenants during compulsory acquisitions. As a result, these stakeholders may find it challenging to assert their claims or seek redress when their interests are extinguished.

In addition to compensation issues, displacement poses a significant challenge for both mortgage holders and tenants. When land is acquired compulsorily, individuals with mortgages may lose not only their financial investment but also their homes, leaving them without recourse to recover their losses. Tenants, similarly, face the threat of eviction without adequate relocation support or compensation for their housing arrangements. This displacement can lead to severe socio-economic consequences for affected individuals and families, as they may struggle to find alternative housing or secure new leases in an already competitive market.

The lack of clear legal provisions addressing these displacement issues further complicates matters for both mortgagees and tenants. The challenges faced by mortgage holders and tenants during compulsory land acquisitions highlight critical gaps in Tanzanian land law that require urgent attention. While both groups possess recognized legal interests in land, the current framework fails to adequately protect their rights during acquisition processes. This oversight calls for comprehensive legal reforms that explicitly address the rights of mortgagees and tenants, ensuring they are fairly compensated and protected from unjust displacement.

VI. COMPENSATION MECHANISMS IN COMPULSORY ACQUISITION

The existing compensation mechanisms for compulsory land acquisition in Tanzania reveal significant inadequacies that adversely affect mortgage holders and tenants. Under the current legal framework, compensation is primarily directed toward holders of rights of occupancy, often neglecting the rights of third-party interests such as mortgages and leases. For instance, the Land Acquisition Act stipulates that compensation is to be paid to those with rights of occupancy, but it does not explicitly include provisions for mortgagees or tenants who may have invested heavily in the property or rely on it for their livelihoods. This oversight leaves mortgage holders without financial recourse when their properties are acquired, despite their legitimate interests in the land. A notable example is when land is acquired for public infrastructure projects; mortgage holders may find themselves losing not only their homes but also the equity they have built through mortgage payments, without any compensation to reflect their financial stake.

Furthermore, the lack of explicit provisions for third-party interests in the compensation framework exacerbates these challenges. The legal ambiguity surrounding the status of mortgagees and tenants during compulsory acquisitions creates a situation where their rights are neither clearly defined nor adequately protected. For instance, while tenants have exclusive possession rights under lease agreements, these rights are often disregarded during acquisition processes, leading to sudden evictions without compensation or alternative housing solutions. The absence of clear guidelines on how tenants and mortgage holders should be compensated undermines their ability to seek justice or restitution when their properties are taken. This situation highlights a critical gap in the law that fails to recognize the economic realities faced by these stakeholders.

To address these inadequacies, there is an urgent need for comprehensive reforms to the compensation mechanisms governing compulsory land acquisition in Tanzania. Legal amendments should explicitly recognize and protect the rights of mortgage holders and tenants, ensuring they are entitled to fair compensation when their interests are affected by government actions. This could involve establishing a clear framework that outlines how compensation is calculated for third-party interests, considering factors such as market value, investment made in the property, and potential relocation costs. By incorporating explicit provisions for these groups into the legal framework, Tanzania can foster a more equitable land acquisition process that respects and upholds the rights of all stakeholders involved. Such reforms would not only enhance legal clarity but also promote social

ISSN No: -2456-2165 https://doi.org/10.38124/ijisrt/25sep1156

justice and economic stability for those impacted by compulsory land acquisitions.

VII. A CASE STUDY

One notable example is the case of a residential area in Kimara Ubungo, Dar es Salaam, where the government announced plans to acquire land for a new road project. Many residents, including mortgage holders, were left in a precarious situation as they had invested significant financial resources into their homes. Despite holding valid mortgages, these individuals found themselves without compensation or alternative housing options when their properties were acquired. The lack of clear legal provisions addressing their rights during this process exemplifies the vulnerabilities faced by mortgage holders in Tanzania's current land acquisition framework.

Another illustrative case involves tenants residing in a commercial area slated for redevelopment. When the government initiated compulsory acquisition for a new shopping complex, many tenants were abruptly evicted without prior notice or compensation. These individuals had established businesses and relied on their leased spaces for income. The absence of explicit protections for tenants during compulsory acquisitions meant that they were left to fend for themselves, often resulting in financial losses and disruption of livelihoods. This situation highlights the inadequacies in the legal framework that fails to recognize and safeguard the interests of tenants who contribute to the local economy through their businesses. These case studies underscore the urgent need for reform in Tanzania's land acquisition laws to ensure that both mortgage holders and tenants are adequately compensated and protected during compulsory acquisitions.

VIII. COMPARATIVE WITH ANOTHER JURISDICTION

A comparative analysis of land acquisition frameworks in countries with more robust protections for mortgage holders and tenants can provide valuable lessons for Tanzania. For instance, in Canada, the Expropriation Act ensures that all affected parties, including mortgagees and tenants, are compensated fairly when their properties are acquired for public use. The Act explicitly includes provisions that recognize third-party interests, ensuring that mortgage holders receive compensation that reflects their financial stake in the property. This approach contrasts sharply with the Tanzanian framework, where compensation is primarily directed toward holders of rights of occupancy, often leaving mortgagees and tenants without recourse. The Canadian model demonstrates how clear legal provisions can safeguard the rights of all stakeholders involved in land acquisition, thereby promoting fairness and equity.

Similarly, Australia’s land acquisition laws provide comprehensive protections for tenants and mortgage holders. The Land Acquisition and Compensation Act 1986 outlines specific compensation entitlements for all affected parties, including those with leases or mortgages. For example, if a tenant is displaced due to compulsory acquisition, they are entitled to compensation not only for the loss of their lease but also for any relocation expenses incurred. This inclusive approach ensures that the economic impacts of compulsory acquisitions are mitigated for all affected individuals. In contrast, Tanzania's current legal framework lacks explicit provisions addressing the rights of mortgagees and tenants during compulsory acquisitions, leading to significant vulnerabilities and economic hardships for these groups.

These comparative examples highlight the necessity for Tanzania to reform its land acquisition laws to incorporate explicit protections for third-party interests such as mortgages and leases. By adopting best practices from jurisdictions like Canada and Australia, Tanzania can create a more equitable framework that recognizes the rights of all stakeholders involved in compulsory land acquisitions. Implementing comprehensive compensation mechanisms that account for the financial investments of mortgage holders and the livelihoods of tenants would not only enhance legal clarity but also foster social justice and economic stability within communities impacted by compulsory acquisitions. Such reforms are essential for ensuring that all individuals affected by government actions are treated fairly and compensated adequately for their losses.

IX. CONCLUSION

The current legal framework governing compulsory land acquisition in Tanzania inadequately addresses the challenges faced by mortgage holders and tenants. The Land Acquisition Act allows the government to acquire land for public purposes, but the compensation mechanisms primarily focus on holders of rights of occupancy, often neglecting the rights of third-party interests such as mortgages and leases. This oversight creates significant vulnerabilities for mortgagees and tenants, who may lose their investments and homes without adequate compensation or legal recourse. As highlighted in various case studies, individuals affected by compulsory acquisitions often find themselves in precarious situations, underscoring the urgent need for reforms that recognize and protect these stakeholders.

To ensure equitable treatment in compulsory land acquisitions, it is essential to amend existing laws to explicitly recognize third-party interests. This could involve revising the Land Acquisition Act to include clear provisions that outline the rights of mortgage holders and tenants during the acquisition process. For instance, legislation should stipulate that mortgagees are entitled to compensation that reflects their financial stake in the property, as well as provisions for tenants to receive compensation for lost leases and relocation costs. By addressing these gaps in the legal framework, Tanzania can create a more just and equitable system that protects the rights of all parties involved in land acquisition processes.

In conclusion, comprehensive legal reforms are necessary to enhance protections for mortgage holders and tenants during compulsory land acquisitions in Tanzania. These reforms should focus on establishing clear compensation mechanisms that account for third-party

ISSN No: -2456-2165 https://doi.org/10.38124/ijisrt/25sep1156

interests and conducting awareness campaigns to educate stakeholders about their rights under current laws. By implementing these recommendations, Tanzania can foster a more equitable land acquisition process that respects the investments and livelihoods of all affected individuals, ultimately contributing to social justice and economic stability within communities impacted by compulsory acquisitions.

RECOMMENDATIONS

To better protect third-party interests during compulsory land acquisitions in Tanzania, several key legal reforms are necessary. First, there is a pressing need for the amendment of existing legislation to include explicit protections for mortgage holders and tenants. Currently, the Land Acquisition Act primarily focuses on compensating holders of rights of occupancy, leaving mortgagees and tenants without adequate recourse when their interests are affected. For instance, the law should be revised to clearly define the rights of mortgage holders and tenants during compulsory acquisitions, ensuring that their financial investments and living arrangements are considered in the compensation process. This could involve creating provisions that guarantee compensation based on the market value of the property, as well as any improvements made by mortgage holders or tenants.

In addition to legislative amendments, the establishment of clear compensation mechanisms is essential. A comprehensive framework must be developed to guide how compensation is calculated and distributed to all affected parties, including third-party interests. This framework should outline specific criteria for determining compensation amounts, considering factors such as the duration of tenancy or mortgage agreements, the market value of the property, and any relocation costs incurred by displaced individuals. For example, if a tenant is evicted due to compulsory acquisition, they should receive compensation that covers not just their lost lease but also any expenses related to finding new housing. By implementing such mechanisms, Tanzania can ensure a fairer and more transparent compensation process that acknowledges the rights of all stakeholders involved.

REFERENCES

[1]. Ansong, S. A., Compulsory Land Purchase and Compensation. *Rev. Ghana L.*, *8*, 28. 2021.

[2]. Baitani, M. Examination on the Laws Governing Compulsory Land Acquisition in Relation to Property Rights in Tanzania. *Journal of Legal Studies & Research*, 2022, pp. 53-72

[3]. De Maria, M., Robinson, E. J., & Zanello, G., Fair compensation in large-scale land acquisitions: fair or fail?. *World Development*, 2023, pp. 106-338.

[4]. Elong, S. Assessment of the challenges and effects of delays in compulsory land acquisition on the performance of road construction projects in Uganda (Doctoral dissertation, Kyambogo University). 2020.

[5]. Gutting, G., & Oksala, J. Michel Foucault. In EN. Zalta (Ed.), *The Stanford Encyclopedia of Philosophy*. Retrieved from https://plato.stanford.edu/archives/spr2019/entries/foucault 2019

[6]. Komu, F.J., “Conceptualizing Fair, Full and Prompt Compensation – the Tanzanian Context of Sustaining Livelihood in Expropriation Projects”, Vol. 2, Issue2, Journal of and Administration in Eastern Africa July 2014

[7]. Makupa, E., Matotola, U., & Alananga, S., Financing Compulsory Land Acquisition in Tanzania: Aligning Legal Requirements and Practices. *The Journal of Building and Land Development*, 2023, pp.1-19.

[8]. Mango, J., “An Overview of the Cadastral System in Tanzania”, WCS -CE, the World Cadastre Summit, Congress and Exhibition, Istanbul, 20th – 25th April, 2015, p.4

[9]. Ndjovu, C., “Understanding Causes of Dissatisfactions among Compensated Landowners in Expropriation Programs in Tanzania”, Vol. 5, Issue 1, International Journal of Scientific and Technology Research, January 2016

[10]. Oladokun, T. T., Improving Land Governance in Nigeria: The Case of Compulsory Acquisition and Compensation Practice. *Journal of Civil Engineering and Architecture*,2023, pp. 251-257.

[11]. Osumanu, I "Compulsory land acquisition by government and litigations in Ghana: an empirical study of three educational institutions in Wa Municipality." *Journal of Planning and Land Management*,2020, pp. 1-11.

[12]. Tagliarino, N.K., “The Status of National Legal Frameworks for Valuing Compensation for Expropriated Land: An Analysis of whether National Laws of 50 Countries/Regions across Asia, Africa and Latin America Comply with International Standards on Compensation Valuation”, Vol. 6, Issue 37 June 2017.

[13]. Tenga, R.W. & Mramba, S.J., Conveyancing and Disposition of Land in Tanzania: Law and Practice, Nairobi: LawAfrica Publishing (K) Ltd, 2017