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## CUSTOMARY RIGHTS OF OCCUPANCY ON SURVEYED LAND IN TANZANIA: A REVIEW OF THE LEGAL FRAMEWORK

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### Abstract

This article critically examines the legal recognition and protection of customary rights of occupancy on surveyed land within the Tanzanian legal framework. Tanzania operates a dual land tenure system that acknowledge both statutory and customary land rights, primarily governed by the Land Act Cap 113 and the Village Land Act Cap 114 R: E 2023. While these laws affirm the legitimacy of customary tenure, the process of land surveying and formal registration often introduces tensions between statutory procedures and traditional practices. The review explores how customary rights are adjudicated, registered, and potentially transformed when land is surveyed, highlighting key legal provisions, judicial interpretations, and practical challenges. Issues such as displacement, gender inequality, and limited legal awareness among the rural communities are discussed. The article concludes by proposing policy reforms aimed at harmonizing statutory and customary systems, ensuring inclusive and equitable land governance in Tanzania.

**Keywords:** Customary land tenure, Rights of occupancy, Surveyed land

## INTRODUCTION

Land tenure in Tanzania is governed by a dual system that recognizes both statutory and customary rights of occupancy<sup>i</sup>. Customary land tenure, deeply rooted in traditional practices and community norms, remains the dominant form of landholding in rural areas. Despite its prevalence, the legal recognition and protection of customary rights especially on surveyed land have historically been fraught with ambiguity and marginalization<sup>ii</sup>.

The enactment of the Land Act No. 4 of 1999 [Cap 113] and the Village Land Act No. 5 of 1999 [Cap 114] marked a significant shift in Tanzania's legal landscape by formally acknowledging customary rights of occupancy as equivalent in status to granted rights of occupancy (Village Land Act, Section 18(1)<sup>iii</sup>. These laws aimed to harmonize traditional landholding systems with modern statutory frameworks, thereby enhancing tenure security and promoting equitable land access<sup>iv</sup>.

However, challenges persist. Customary rights holders often lack formal documentation, making their claims vulnerable to disputes and expropriation, particularly in areas undergoing land surveying and urban expansion<sup>v</sup>. Moreover, the process of converting

customary rights into statutory titles on surveyed land remains complex and inaccessible to many rural communities<sup>vi</sup>. Scholars have noted that while Tanzania has made strides in safeguarding customary tenure, gaps in implementation and legal inconsistencies continue to undermine the effectiveness of these protections.

This article critically reviews the legal framework governing customary rights of occupancy on surveyed land in Tanzania, examining its strengths, limitations, and the practical implications for landholders. It also explores potential reforms to ensure that customary land rights are not only recognized in law but also respected in practice.

## CONCEPTUALISATION OF THE KEY TERMS AND PHRASES CUSTOMARY LAND TENURE

In most of Africa countries land tenure system is almost the same, and also customary rights is also applicable or applied. Land tenure system is formal way of land occupation which is under land administration authority<sup>vii</sup>. Land may be occupied by two common modes in Africa one via Granted Right of Occupancy (GRO) and



two Customary Right of Occupancy (CRO). Both of the two are subject to some conditions contained in the certificate of title.

In one hand land tenure system in Africa guarantee land owners' security of their certificate of titles, in most of Africa States period suggested in certificate of title are 33 years, 66 years or 99 years. These periods are subject to renewal upon expiry of time, however in some jurisdiction time contained in certificate of title lasts for life such as Republic of Kenya. And also land tenure system in most of the Africa States provides for the room of co-ownership of land. The co-ownership guaranteed more than one person to holds the same piece of land.

The variation of land tenure system in the same region influences land conflicts to exist and hence sustainable development become impractical. Now it's here suggested the reimagining of land governance must aimed at unifying land tenure system in Africa. In other hand customary rights these are land rights granted to land owner via customary rules and arrangement. The customary rules originated from longstanding practices of the certain community regarding to land matters. Customary land rights in Tanzania are codified<sup>viii</sup> and are most applied in unregistered land.

From the above legal argument therefore both land customary rights form part of land tenure system. The land tenure system which is most preferred however is granted right of occupancy compared to customary one which guarantee customary rights. The customary rights have less legal weight compared to statutory rights<sup>ix</sup>. And this is legal settled point in most of the Africa States, the reimagining land governance for sustainable future must accommodate or balance the rights accrued from both tenure system or completely discourage customary arrangement in land ownership.

## CUSTOMARY RIGHTS OF OCCUPANCY IN TANZANIA

In Tanzania customary rights of occupancy refer to the landholding arrangements rooted in traditional practices and community norms, often passed down through generation without formal documentation<sup>x</sup>. These rights are particularly in rural areas, where land is held and managed according to local customs rather than formal state issued a title.

The legal framework for land tenure in Tanzania is primarily anchored in<sup>xi</sup> these statutes affirm the legal equivalence of customary and granted rights of occupancy. Specifically, under section 18 (1)<sup>xii</sup>, customary rights of occupancy have given equal legal status to granted rights of occupancy. This means that land held under customary tenure is legally protected and enforceable<sup>xiii</sup>. Also, in the case of *Mtoro Bin Mwamba v Attorney General*<sup>xiv</sup> in this case the issue was on the Nature of customary land rights, it was held that "customary land rights are not ownership in the Western sense" but they are legitimate rights to occupy and use of land. These rights are vested in the community and are enforceable under customary law<sup>xv</sup>

Despite this legal parity, customary rights of occupancy often face challenges when applied to surveyed land. Surveying typically formalizes land boundaries and ownership, which can conflict with the fluid and communal nature of customary tenure. Moreover, lack of the written documentation and formal registration for customary rights can lead to disputes, especially in peri-urban areas undergoing rapid development<sup>xvi</sup>. In the case of *Village Council of Mnyuzi v Mzee Athumani*<sup>xvii</sup> in this case there was a dispute between customary land rights on land that had been surveyed, the High Court emphasized that surveying land does not automatically extinguish customary rights, unless due process is followed.

The Tanzanian legal system has made strides in safeguarding these rights, including provisions for converting customary rights into formal titles. However, gaps remain in implementation, particularly in ensuring that rural communities are adequately informed and supported through the tension process. Scholars such as Datus Didace have highlighted the need for a more inclusive and accessible legal framework that bridges the divide between traditional practices and statutory land governance.

## SURVEYED LAND

Surveyed land refers to a parcel of land that has been professionally measured, mapped, and documented by a licensed land surveyor in accordance with Tanzanian laws and regulations<sup>xviii</sup>. Section 2<sup>xix</sup> provided the term "survey" to means a cadastral, topographical or triangulation survey of land.

Surveyed land is distinct from unsurveyed land in that it has legal recognition and can be used to support formal land transactions, planning and development. It can also play a critical role in securing granted rights of occupancy rather than customary rights of occupancy in resolving boundaries disputes.

## TREATMENT OF CUSTOMARY RIGHTS OF OCCUPANCY ON SURVEYED LAND IN TANZANIA

The legal basis for land surveying in Tanzania is the Survey Act, Cap 324, which mandates that only licensed land surveyors may carry out surveys and that every survey must follow regulations issued under the Act. Before any field work begins, the client engages a licensed surveyor who prepares a survey brief specifying the area, purpose, and scope of work.

Surveying provides the physical and technical basis for formal landholding by demarcating boundaries with beacons or pegs and producing certified maps and plans. These survey records are mandatory for issuing Certificates of Customary Rights of occupancy (CCROs) or conversion into Certificate of Granted Right of Occupancy (CGROs), thereby transforming informal community level claims into legally enforceable interests<sup>xx</sup>. The treatment of customary rights of occupancy on surveyed land include:

### Equal status under the Village land Act Cap 114

Customary rights of occupancy over surveyed village land are deemed "in every respect of equal status and effect to a granted

rights of occupancy". This parity is enshrined in section 18 (1)<sup>xxi</sup>, which ensures that once a village council allocates land under customary norms even if subsequently surveyed its holder enjoys standings as holders of statutory grants<sup>xxii</sup>. And the same was provided in the case of *Registered Trustees of the Catholic Diocese of Mbulu and Others v Attorney General and others*<sup>xxiii</sup> in this case a missionary operated tourism ranch was granted Maasai pasture without consent or compensation. The court quashed the grant, holding that unregistered Maasai customary rights enjoyed the same status and protection as granted rights and could not be overridden without free, prior and informed community consent.

#### Survey, registration and the Customary Right of Occupancy (CRO)

When a customary interest on village land is surveyed, the licenced surveyor prepares a sketch plan that the village council uses to resolve the grant formally. The council forwards its resolution and the survey plan to the commissioner for Land, who issues a certificate of Customary Right of Occupancy. The Customary Right of Occupancy transforms holders oral or sketch plan right into a registered title, binding all third parties and facilitating secured transactions, development approvals and dispute resolution. As it was provided in the case of *Matimila Mnanji v Commissioner for Lands*<sup>xxiv</sup> in this case Land and Housing Tribunal confirmed Ms. Mnanji's customary allocation, the Land Registry still declined to register certificate of Customary Right of Occupancy, citing incomplete survey data. The court of appeal ordered registration, holding that once local adjudication and surveying are complete, the commissioner has no discretion to withhold certificate of Customary Right of Occupancy entry based on technicalities. Hence this ruling enforces the statutory guarantee that customary rights once properly surveyed and adjudicated, must be formalised in land registry.

#### Interaction with Granted Rights on General Land

On general land<sup>xxv</sup> permits a statutory granted right of occupancy to override an existing customary right if the two-interest conflict. In practice, this means that even a surveyed and Certificate of Customary Right of Occupancy can be extinguished by a later grant, provided due process under the Land Act, cap 113 is followed and compensation is paid to the customary holder. And the same was provided in the case of *Hassan Ally Nungu and Sox Others v Minister for Lands and Another*<sup>xxvi</sup> in this case a coastal agriculture company obtained a long-term lease under the Land Act over mangrove areas that villagers had applied to register via certificate of Customary Right of Occupancy. Development works commenced before certificate issued. The court restrained further development, ordering the Minister to regularise the villagers' customary rights first and held that granted leases under the Land Act are subordinate pending to certificate of Customary Right of Occupancy application on the same land. This decision underscores investor due diligence, no granted right on general land can leapfrog unregistered customary claims on surveyed village land.

#### Revocation and Enforcement under the Land Act

Beyond displacement by grants, customary rights whether surveyed or not remain subject to the Land Act's enforcement provisions. The President may revoke a customary right for "good cause", such as persistent breach of occupancy conditions or abandonment. Any revocation must adhere to the summary and judicial procedures laid out in that Act, including notice, opportunity to remedy, and appeal rights to the Districts Land and Housing Tribunal. As it was provided in the case of *Tanzania Milling Company Ltd v Attorney General and Commissioner for Lands*<sup>xxvii</sup> in this case President revoked the company's rights of occupancy over Plot No 46/1A/C at Pugu Industrial Area for alleged breach of conditions, without replaying to the occupier's show cause letter. Court finding was revocation under section 45(3) and 48(3) must follow a strict sequence with public notice, a chance to show cause, a formal warning and where appropriate, recourse to section 47 remedial measure before presidential action. Failure to observe any step rendered the revocation void. Hence revocation was quashed the court reinforced that even the President's power is subject to the Act's procedural safeguards.

### CHALLENGES AND GAPS IN CUSTOMARY RIGHTS OF OCCUPANCY ON SURVEYED LAND

Despite constitutional and statutory recognition of customary tenure as equal to statutory grants, once village land undergoes cadastral mapping under the Land survey Act, Neither the Land Act Cap 113 R: E 2023 nor Village Land Act Cap 114 R: E 2023 or their Subsidiary regulations prescribe the form, fees, or steps needed to secure certificate of customary rights of occupancy on already surveyed land. This regulatory silence compounds institutional fragmentation, high surveying costs, and limited technical capacity at the local level. As a result, customary occupants find themselves caught between traditional claims and formal titling process, unable to leverage land for credit or defend against overlapping statutory grants<sup>xxviii</sup>. By tracing the relevant statutes, subsidiary rules and landmark cases, this review maps the gaps in Tanzania's legal framework and sets the stage for targeted reforms to restore transparency, coherence and equitable access to tenure formalization<sup>xxix</sup>. Therefore, the followings are the challenges and gaps facing customary land holders in Tanzania.

#### Absence of procedural guidelines

Section 5<sup>xxx</sup> provided for mandates that all cadastral survey comply with regulations made under the Act, nowhere does the Act or its regulations prescribe steps for converting parcels surveyed under its regime into Certificate of Customary Rights of occupancy, leaving a procedural vacuum once customary land is formally mapped. Land Survey and Surveyors<sup>xxxi</sup> these regulations set out technical standards for how licensed surveyors conduct and document survey. They make no provision for protecting or transitioning customary tenure interests post survey, nor do they reference Certificate of Customary Rights of occupancy issuance or integration with village land regime. This also was seen in the case of *Tanzania Investment Centre v Albin Petro*<sup>xxxii</sup> in this case an

investor's grant of right of occupancy overlapped areas claimed under customary tenure on surveyed village land. The investor argued that customary holders could not apply under the Land Act formal grant procedures. It was held that the appeal focused on priority of titles but concluded with an obiter invitation to parliament and the land register to close the procedural lacuna. The same was addressed by Deininger<sup>xxiii</sup> in this book the author find the gap by highlighting not just cost and technical barriers but specifically the absence of ministerial regulations to guide customary occupants on post survey.

#### Legal and Policy Inconsistencies

The Land Act Cap 113 of (1999) R: E 2023 prioritizes granted rights over customary rights, while the Village Land Act Cap 114 of (1999) grants both equal statuses, creating a hierarchy that erodes customary claims. Absence of clear procedures for converting customary interests into Certificates of Customary Rights of Occupancy (CROs) on already surveyed parcels. Limited provisions for safeguarding community lands when large-scale investments trigger compulsory acquisition under Sections 32 to 33 of the Land Act. In the case of *Tanzania Milling Company Ltd v Attorney General and Commissioner for Lands*<sup>xxiv</sup>. And this was provided in the landmark appeal the Court of Appeal scrutinised the President's power to revoke a right of occupancy under the Land Act. Not only that but also Fimbo<sup>xxv</sup> in discussion of land tenure systems in Tanzania a historical background of a country becomes of most important. As hinted above land tenure systems and land management in general in Tanzania depends on colonial regimes that a country passed through. This legal scholar in his work presented his view on land tenure in relation to historical background of land law in Tanzania, but left aside issue of land on position of customary right of occupancy over granted right of occupancy on post surveyed land. In due cause of this study, a study will fill such a gap.

#### Institutional and Administrative Bottlenecks

Survey and registration processes remain heavily centralized, with District Land Offices under-resourced and skilled surveyors in short supply. Bureaucratic delays: approval of survey plans and issuance of CRO can take years, leaving communities in awaiting. Poor data management: fragmented records between Village Land Councils, District Offices and the National Land Registry hinder verification of customary claims. This was shown in the case of *Victoria Mushi v Commissioner for Lands*<sup>xxvi</sup>. In this case Ms. Mushi applied Certificate of Customary Rights of occupancy in 2001, eight years later the commissioner had not still issued it. She petitioned the High Court for writ of mandamus compelling the administrative authority to perform its statutory duty. The court granted mandamus, overriding issuance within 60 days and declaring that unreasonable delay violated both the Village Land Act's registration mandate and the constitutional right to fair administrative action.

#### Socio-Cultural and Equity Barriers

Gender bias persists in customary decision-making bodies, often excluding women from inheritance or allocation of surveyed plots. Weak community engagement: surveys conducted without free,

prior and informed consent risk dispossession and conflict. Communal lands and grazing corridors are difficult to demarcate under rigid cadastral models, leading to loss of shared resources. Also, this was discussed in the case of *Saada Nassor v Commissioner for Lands and others*<sup>xxvii</sup> in this case a widow, Mrs Nassor, applied for a Certificate of Customary rights of occupancy over land she occupied alongside her late husband. The village council refused, citing local customary practice that only male household heads may formally land certificate. It was held that non discrimination mandate under section 3(2) and the Constitution's equality clause of article 12 of Constitution prohibit such exclusion. The court directed the commissioner to issue Certificate of Customary rights of occupancy in Saada's name within 30 days.

#### Conflict Between Customary Tenure and Commercial Interests

Investors Favor general land titles, prompting conversion of village lands to general land and sidelining customary occupants.

Inadequate or delayed compensation when customary rights are extinguished for infrastructure or agribusiness schemes. Judicial remedies are costly and slow, discouraging smallholders from litigating infringements of their occupancy rights. And this was seen in the case of *Elizabeth Sinare and Others v Kilombero Sugar Estate Ltd*<sup>xxviii</sup> in this case Kilombero Sugar Estate sought to expand its cane plantation onto adjacent surveyed parcels without verifying Certificate of Customary rights of occupancy applications lodged by neighbouring smallholder farmers. The farmers moved to Tribunal to block the expansion. It was held that the tribunal ruled the company's expansion invalid insofar as it infringed pending Certificate of Customary rights of occupancy applications. It directed the company to halt all works until the Commissioner for Lands issued or refused the farmer's Certificate of Customary rights of occupancy.

### CONCLUSION

From the discussion and observations made above and basing on customary right of occupancy on surveyed land, the recognition of customary rights of occupancy within Tanzania's legal framework represents a critical step toward securing land tenure for rural communities and indigenous populations. Despite constitutional and statutory provisions that affirm these rights particularly under the Land Act and Village Land Act practical implementation remains fraught with challenges. These include bureaucratic hurdles in formalizing rights on surveyed land, limited awareness among customary right holders, and inconsistencies in land administration practices.

The review reveals that while the legal framework provides for the conversion of customary rights into granted rights of occupancy, the process is often inaccessible, costly, and poorly understood. Moreover, the coexistence of customary and statutory systems has led to overlapping claims, disputes, and marginalization of vulnerable groups. Bridging the gap between legal recognition and practical enforcement is essential to ensure equitable land governance and sustainable development. To strengthen the protection and realization of customary rights of occupancy on surveyed land in Tanzania, the following measures are





recommended: First Legal Harmonization and Simplification, streamline procedures for converting customary rights into granted rights of occupancy. Clarify ambiguities in the Land Act and Village Land Act regarding surveyed land to reduce administrative conflicts.

Second Capacity Building and Public Awareness, conduct nationwide awareness campaigns to educate communities about their land rights and the processes for formalization. Train local government officials and village land councils on legal procedures and rights-based approaches.

Thirdly, Institutional Strengthening, enhance the capacity of land administration bodies, including the Ministry of Lands and local authorities, to process applications efficiently and transparently. Digitize land records and improve access to land information systems.

Having addressed the aforesaid, it is hoped that the challenges that face Customary rights of occupancy on surveyed land in Tanzania to a great extent will be addressed.

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