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### **Buying Property in Kenya**

The real estate sector in Kenya continues to experience immense growth as more investors, local and foreign are buying property in Kenya. Potential investors who would like to invest in real estate in Kenya are advised to seek the services of qualified professionals like lawyers, registered real estate agents and real estate companies in Kenya. The process is technical and complicated necessitating the services of these professionals.

The procedure to follow when buying property in Kenya varies slightly depending on the type of property. The procedure will vary depending on whether one is purchasing a completed property (ready for occupation), vacant land or an off-plan property. Purchasing an already completed property or vacant land is straightforward compared to buying a property off-plan where one must take into consideration the payment of installments to the developer or vendor.

The completion period for the purchase of an already completed property or vacant land is usually defined by both seller and purchaser but in most cases this period will be within ninety (90) days from the date of signing the agreement for sale and payment of the deposit. On the other hand, when purchasing an off-plan property the purchase price is mostly payable in instalments as agreed between the developer and the purchaser until the project is completed.

### **Due Diligence**

Before buying property in Kenya, it is advisable that a potential buyer conducts due diligence on the property with the help of qualified professionals such as lawyers, surveyors and architects. It is up to the potential buyer to discover all the physical defects in the property and these may not be apparent without the help of qualified professionals.

The *caveat emptor* (buyer beware) rule imposes an obligation on any person intending to acquire an interest in property to investigate the same. An official search should be conducted at the relevant Lands Registry to ascertain the legality of the title. An official search will show who the registered proprietor is and other material aspects like, restrictions and encumbrances (if any).

It is also advisable that the buyer ascertains that the property is not on a road reserve or riparian/wetland area. A look into the Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (*the Ndung'u Report*) is also recommended to ascertain if the property is listed among those that were irregularly or illegally acquired.

It is also critical that a survey or physical inspection of the property is carried out by a qualified and licensed surveyor. This is important so as to identify the property beacons and boundaries to avoid disputes with owners of adjoining properties.

### **Contractual Stage (Sale Agreement)**

After parties have negotiated and agreed on the terms of the transaction like the purchase price, completion date among others, the terms are then crystalized in a written agreement. The Law of Contract Act (Chapter 23 of the Laws of Kenya) requires that a contract for a disposition in land should be in writing, signed by all the parties involved and the signatures of the parties attested to by a competent witness. In most cases the sale agreement will be prepared by the vendor's advocate. It is advisable for the Buyer to seek the services of an independent lawyer to ensure that his or her interests and rights are protected in the agreement.

In instances where either party is out of the country, the sale agreement can be signed by way of counter parts or by an attorney appointed by a duly constituted power of attorney to act on behalf of the party who is not present in the country.

### **Valuation**

For purposes of stamp duty, an application for valuation must be made to the Government Valuer who then prepares a valuation report after making a site visit. The Government Valuer determines the true value of the property in the open market at the date of the transfer. The stamp duty payable is then calculated at rate of 2% or 4 % depending on the nature of property being acquired and the nature of transaction.

### **Payment of Stamp Duty**

The buyer is responsible for paying stamp duty, a tax levied by the Government based on the property value. Stamp duty is charged on the amount assessed by the Government Valuer after valuation or the purchase price, whichever is higher. The applicable rate of stamp duty is as follows depending on the nature of the property and its location:

- 4% for leasehold property mostly located in urban areas, municipalities or cities.
- 2% for freehold land which is mostly agricultural land located in rural areas; and
- 1% for a property registered under a company and the transfer is by way of shares rather than title.

### **Registration**

Registration of title is the last and most important stage when buying property in Kenya. Registration is undertaken after completion. Completion will happen after the buyer pays purchase price in full in exchange for the completion documents from the seller. The completion documents are then lodged at the Lands Registry for the transfer of ownership to be effected and a new title is issued thereafter. Once a buyer acquires a title of the property in their name, it is conclusive evidence of ownership.

## Legal fees

The seller and buyer each pay for the own legal fees as stipulated in the Advocates (Remuneration) (Amendment) Order of 2014. However, there is an exception where buyers pay legal fees for both parties when purchasing an apartment or property comprised in a development of many units. This is common practice informed by the fact that the seller's advocate registers the leases on behalf of the buyer.

## Ownership of Property by Foreigners

Foreigners can own without any restrictions leasehold commercial and residential properties located within urban centres, municipalities or cities. The Kenyan Constitution however limits foreigners to holding leasehold titles for a maximum of 99 years. Foreigners are however not allowed to own freehold properties including agricultural land.

For any further information regarding the purchasing property in Kenya, please write to Joseph Esibi at [jesibi@bryanyusuf.co.ke](mailto:jesibi@bryanyusuf.co.ke).

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