

**LAND REFORMS IN KENYA: IMPROVED LAND TENURE SECURITY MOTIVATES
INCREASED INVESTMENTS AND EQUITY**

IBRAHIM MWATHANE, Land Development and Governance Institute, Kenya and **JAMES
KAPANYA NGUZO**, Kilifi County Government, Kenya; jnguzo@yahoo.com

**Paper prepared for presentation at the
“ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY”
The World Bank - Washington DC, March 19-23, 2018**

Copyright 2018 by Ibrahim Mwathane and James Kapanya Nguzo. All rights reserved. Readers may make verbatim copies of this document for non-commercial purposes by any means, provided that this copyright notice appears on all such copies.

LAND REFORMS IN KENYA: IMPROVED LAND TENURE SECURITY MOTIVATES INCREASED INVESTMENTS AND EQUITY IN KILIFI COUNTY

Abstract

This paper aims at demonstrating how Kenya's land reforms have led to the improvement of tenure security, livelihoods and increased investments at local level. It will highlight how the policy, constitutional and legal reforms done at national level have opened opportunity for the protection of tenure rights through adjudication, surveying and registration of land in Kilifi County at the Kenya Coast. The Kilifi County Government land adjudication and settlement programme has been able to mainstream the principles developed through Kenya's policy and legal reforms to date. The benefits to the areas issued with title deeds include reduced land and related disputes, increased human settlements, improved agricultural productivity, emergence of new commercial centres, increased investor interest and an overall improvement of individual incomes and the county GDP. It is recommended that this programme be scaled up to ensure benefits and improvement of livelihoods for more people in the county.

Key Words: Land reform, land policy, land law, tenure, investment

1. LAND AND DEVELOPMENT

Land remains an important factor of production in the economies of all States. The effective governance and management of land provides good space for development activities, the sustainable exploitation and management of natural resources, ensure food security of nations and minimise conflicts between land users. This explains recent global efforts to develop policies, principles, guidelines, indicators or initiatives to encourage good land governance, or to measure the quality of land governance, worldwide.

The 2030 global framework for development sets out priorities, goals and targets to guide nations. Of the seventeen *Sustainable Development Goals (SDGs)*¹, and their respective targets, set out in the 2030 development framework, the attainment of six will be heavily influenced by country-level land

¹<https://sustainabledevelopment.un.org/post2015/transformingourworld>

governance processes. These are goals two (2) on ending hunger and achieving food security; goal five (5) on achieving gender equality and empowering women and girls; goal six (6) on ensuring availability and sustainable management of water and sanitation for all; goal eleven (11) on making cities and human settlements inclusive, safe, resilient and sustainable; goal thirteen (13) on combating climate change and its impacts; and goal fifteen (15) on sustainably managing forests, combating desertification, halting and reversing land degradation and halting biodiversity loss.

The FAO *Voluntary Guidelines (VG) on the Responsible Governance of Tenure of Land, Fisheries and Forests*², provide good reference for the governance of tenure of land, fisheries and forests, with the goal of achieving food security for all. This resonates closely with SDG two (2). The principles contained in the guidelines have been useful reference for country-level initiatives for improving land governance processes. The governance of tenure is critical to how people, communities and other land user stakeholders are to acquire rights, duties, use and control of land. The FAO Guidelines are consistent with, and draw on, international and regional instruments that address human rights and tenure rights.

To The World Bank's *Land Governance Assessment Framework (LGAF)*³ provides a good diagnostic tool for countries to measure and rate the quality of land governance at national and sub-national level. The data collected through LGAF, once processed, is useful in guiding policy dialogues and decision making in participating countries. LGAF results can help to identify good practice areas, and also areas that require to be reformed, and can also be used to drive upland issues in a country's development agenda, with the overall effect of boosting a country's economic growth.

At the regional level, the Land Policy Initiative (LPI), now the Africa Land Policy Centre (ALPC), has made tremendous efforts in sensitising African Union Member States on the importance of good land governance for national development. In this regard, *Framework and Guidelines for Land Policy in Africa*⁴ (F & G), has been a useful tool. It provides useful guide on the processes of land policy development, implementation and tracking, all critical to good land governance and land tenure security. The F & G subsequently informed the *African Union (AU) Declaration on Land Issues and Challenges*, which calls upon AU Member States to provide the necessary political goodwill and resources to promote land policy development within their jurisdictions.

²Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, Food and Agricultural Organization of the United Nations, Rome, 2012.

³<http://www.worldbank.org/en/programs/land-governance-assessment-framework>

⁴AUC-ECA-AfDB Consortium (2010), *Framework and Guidelines on Land Policy in Africa*, Addis Ababa, Ethiopia

2. KENYA : LAND REFORM INITIATIVE

As one of the African Union Member States, Kenya has over the last two decades aggressively driven policy and legal reforms that have opened room for improving land governance at national and county level. The resultant policy, constitutional and legal frameworks spell great opportunity for protecting tenure rights of all categories of land in Kenya.....public, community and private land. Kenya's reforms have been closely influenced by some of the initiatives and frameworks discussed above. In its land policy formulation and implementation, heed was paid to the Millennium Development Goals, the precursor to the Sustainable Development Goals. Future discussions and programme initiatives will also be informed by the SDGs and its related targets. The FAO VGs are in application in some of the arid parts Kenya, with the main aim of improving decentralized land governance in the project specific Counties. The Land Governance Assessment Framework was conducted for Kenya too, providing helpful information to policy makers⁵. It is anticipated that such information will be used to guide policy interventions in the weak governance areas in Kenya. Kenya's land policy draft was also peer reviewed against the continental framework and guidelines before it was accorded parliamentary approval.

The impact of Kenya's reforms at the local level will be felt gradually. But some County governments have already seized the policy and legal frameworks so far developed to secure and/or improve the tenure rights of their residents. Kilifi County⁶, whose initiative in that regard is discussed below, is one such County. But a broader look at the reforms that have happened in Kenya in the recent past will need to precede the discussion on the Kilifi initiative.

2.1 The National Land Policy of 2009⁷

Kenya's national land policy is contained in sessional paper No 3 Of 2009. This policy, approved after a process that lasted close to seven years, is now in its eight year of implementation. It policy requires to be reviewed after every ten years. It provided policy clarity to issues relating to: Kenya's historical land question; the constitutional aspects of land; land tenure issues in Kenya; land use management issues; land administration issues; land issues that require special intervention; the institutional framework; and the implementation framework. The policy embraces the principles of sustainable production, conservation, adjudication and registration of land, a land market, dispute resolution, resolution of historical injustices, gender and equity.

⁵ <http://www.ardhi.go.ke/?p=337>

⁶ Kilifi County is along the Kenya Coast and one of Kenya's forty seven (47) Counties

⁷ Sessional Paper No 3 of 2009 on National Land Policy, Government Printers, Nairobi

The various pieces of legislation enacted in Kenya since 2010 have been based on the national land policy provisions, and also the constitutional provisions. The policy proposals have driven some major developments in Kenya's land administration and management including: the establishment a national land commission, embracing gender equity principles in land laws, limiting terms of leases held by non-citizens to ninety nine years and also enactment of a law to govern community land. A spatial plan and a land use policy have also been developed and the national land commission was able to review some grants of public land that had been allocated to private individuals, some of which were repossessed for public use. The land commission now has a legal framework against which to admit and listen to complaints on historical injustices and should be able to begin processing the complaints soon.

The impending review will provide a good opportunity for harmonising some of the policy provisions with those of the constitution which came into effect in 2010, a year after the policy was in place. The review will also provide good opportunity to reconsider those aspects that may have been found wanting on implementation. It is hoped that the government and stakeholders have been documenting their experiences, key lessons and challenges to be taken into account during the review. A key challenge will be in ensuring a comprehensive process integrating policy experiences and concerns from the allied sectors such as agriculture, livestock, fisheries, human settlements, industry, energy, tourism, water, infrastructure, wildlife, tourism and forestry which rely heavily on the land policy and the laws derived therefrom.

2.2 The Constitution of Kenya 2010⁸

The post-independence constitution of Kenya was promulgated in August 2010, a year after the land policy. This made it possible to incorporate the land policy principles into the constitution. Chapter five of Kenya's constitution on '*land and environment*' contains provisions on: the protection of right to property; the principles of land policy; classification/categories of land in Kenya; land holding by non-citizens; regulation of land use and property; the establishment of a national land commission; and legislation on land. The constitution in builds the principles of equity in access to land, security of tenure rights, sustainability and production, transparency and effective administration of land, conservation and protection of ecologically sensitive areas, non-discrimination on the basis of gender discrimination, the use of alternative dispute resolution and beneficial arrangements in investments on land.

⁸The Constitution of Kenya 2010, Republic of Kenya, Government Printers, Nairobi

The constitution included a time-bound mechanism for enacting key land legislation. This mechanism helped to ensure that parliament provided consistent oversight on the line ministry of lands to ensure that key land legislation was enacted as per the constitutional schedule. The constitution provides fundamental protection of all rights to property in the three categories of public, community and private land. But the 2010 constitution does not protect any rights to land that may have been irregularly or illegally obtained. This constitution greatly improved on the provisions of Kenya's independence constitution which was thin on provisions to right to property.

2.3 New Land Laws

2.3.1 The Environment and Land Court Act⁹

The Act gives effect to the constitutional provision which establish a superior court, with similar jurisdiction to the high court, to hear and determine disputes relating to the environment and the title to, use and occupation of land. Under the framework provided by this legislation, the court has discretion, with the agreement of or at the request of the involved parties, to adopt and implement alternative dispute resolution, including reconciliation, mediation and traditional dispute resolution mechanisms during the determination of any filed disputes. These courts are yet to be established in all the counties. Their establishment has been limited by inadequate space for the courts and insufficiency of judicial officers while suits that have been filed regarding its jurisdiction have affected their operations.

2.3.2 The Land Act, 2012¹⁰

This Act provides a framework to revise, consolidate and rationalise land laws and to provide the sustainable administration and management of land and land based resources, and connected purposes. It provides comprehensive provisions for the administration and management of private and public land, related leases and charges. It provides for the conversion of land from one category to another, the leasing and sub-leasing of land. It provides for the charging of land and also has a framework for the compulsory acquisition of interests in land, the management of settlement programmes, easements and related rights. The principles of equity in access to land and non-discrimination on the basis of gender are mainstreamed in its various provisions.

2.3.3 The Land Registration Act, 2012¹¹

⁹The Environment and Land Court Act No 19 of 2011, Republic of Kenya, Government Printers, Nairobi

¹⁰The Land Act, 2012, Republic of Kenya, Government Printers, Nairobi

The Land Registration Act provides a framework for the registration of all land in Kenya (public, community and Private) and replaced all the previous land registration laws. The role of registration of land remains a function of the national government which oversees the land registries in all the Counties. The Act establishes the office of a registrar, creates registration units and requires that a register be maintained for each of these units in the land registry. It also specifically requires that a community land register be maintained for community land. It also requires that the authority responsible for survey of land prepares and maintains a cadastral map for every registration unit. It also recognises different kinds of boundaries associated with the different levels of accuracy observed in generating a cadastral map and sets out a boundary dispute determination mechanism. The Act details the effects of registration of land, the rights of proprietors and the various dispositions affecting land, among others. Like in the Land Act, the principles of equity and gender inclusion are mainstreamed in its provisions.

2.3.4 *The National Land Commission Act, 2012*¹²

This piece of legislation provides a framework providing for the functions and powers of the National Land Commission and the qualifications and procedures for appointing its officers. The Act provides for the review of grants and dispositions of public land earlier made in order to determine their propriety or legality. The Commission may review such grants on its own motion, upon a complaint by the national government, the county government, a community or an individual. The powers to review such grants and dispositions were to be exercised within a period of five years upon commencement of the Act in May 2012. Where it deems necessary, the Land Commission may petition parliament for the extension of the powers to review such grants and dispositions of public land. It is noteworthy that these powers ended in May 2017 and no extension has been granted by parliament so far. This limits the commission from scrutinising any further grants until parliament provides the required extension.

The Act also provides a framework for the receipt, admission, investigation and recommending redress to historical land injustices. According to the Act, the admissible cases are those that occurred between 15th June 1895 when Kenya became a protectorate under the British East African Protectorate and 27th August, 2010 when the Constitution of Kenya was promulgated. The provision granting the Commission these powers shall stand repealed within ten years.

¹¹The Land Registration Act, 2012, Republic of Kenya, Government Printers, Nairobi

¹²The National Land Commission Act, 2012, Republic of Kenya, Government Printers, Nairobi

The Commission recently published rules to govern the mechanism to receive, admit, investigate and recommend redress for historical land injustices. However, there hasn't been any formal public communication of the cases recorded, if any, and how they may have been treated. This process is likely to be very closely watched by the investor and political constituencies in Kenya given its sensitivity and implications to registered land rights.

2.3.5 *The Land Laws (Amendment) Act, 2016*¹³

This Act, which commenced in September, 2016, amends the Land Act, the Land Registration Act and the National Land Commission Act to align them with the constitution of Kenya 2010. The Act particularly details the roles of the Cabinet Secretary and those of the National Land Commission in an attempt to provide clarity and stem institutional conflicts between the institutions of the Lands Ministry and the Land Commission which had become prevalent and had undermined service delivery. The Act also provides for procedures to evict unlawful occupants from public, community and private land. This Act makes several fundamental amendments to the three laws enacted in 2012. It is advisable that scholars and practitioners on land in Kenya ensure to always read the three pieces of legislation in tandem with the amendments contained in this law.

The Act clarifies the mechanism for the receipt, admission, investigation and recommending redress to historical land injustices by the National Land Commission. It also makes amendments to the Land Act for the Cabinet Secretary responsible for Land to make guidelines governing the minimum and maximum land holding acreage of private land.

2.3.6 *The Community Land Act, 2016*¹⁴

Kenya's Community Land Act of 2016 provides for the recognition, protection and registration of community land rights and for the management and administration of community land. This is one of the few pieces of legislation to be enacted on community land in Africa. Therefore, its application to community land and the associated lessons in Kenya will be of interest to other jurisdictions yet to enact such law.

The Act defines "community" and "community land" and vests any community land in the respective communities. It provides for the registration of communities and the maintenance of a community land

¹³The Land Laws (Amendment) Act, 2016, Republic of Kenya, Government Printers, Nairobi

¹⁴The Community Land Act, 2016, Republic of Kenya, Government Printers, Nairobi

register by the registrar. Each registered community will have a community assembly consisting of its adult members who will elect a community land management committee for the purpose of managing community land. The Act provides a mechanism for the recognition, adjudication and registration of community land.

It further provides that county governments shall hold unregistered community land in trust on behalf of communities. The Act provides for conversion of community land to public and private and vice versa. It also provides for planning, leasing, and transfer of community land. It further provides for investments on community land and associated benefit sharing, and also a framework for the regulation of land use and dispute resolution. The Act provides that when considering applications for community land, there will be equal treatment of applications for land by women and men and that there will be no discrimination of any person on the basis of gender, disability, minority, culture or marital status. It further provides that women, men, youth, minority, persons with disabilities and marginalized groups have the right to equal treatment in all dealings in community land.

It is anticipated that the tenure enhancement project in Kilifi discussed ahead will greatly benefit from the application of the provisions of this legislation in the county in future.

2.3.7 Regulations to Land, Land Registration and Community Land Acts¹⁵

No enabling subsidiary legislation has been enacted for the Land, Land Registration and Community Land Acts. This has made it difficult to apply several provisions of the laws which are subject to guidance through detailed regulations. The pertinent regulations have however been developed and passed over to parliament, and, as at the time of writing this paper, are awaiting debate in the national assembly¹⁶. It is hoped that these regulations will be enacted within the next session of parliament. This would give a big boost to the application of the new land laws.

3. KILIFI LAND TENURE IMPROVEMENT INITIATIVE

3.1 Location and size

Kilifi County is one of the six counties in the coastal region of Kenya. It borders Kwale county to the south west, TaitaTaveta county to the west, Tana River county to the north, Mombasa county to the south

¹⁵The Land Regulations, 2017; The Land Registration (General) Regulations, 2017; The Community Land Regulations, 2017 : Republic of Kenya, Government Printers, Nairobi

¹⁶http://info.mzalendo.com/hansard/sitting/national_assembly/2017-12-07-14-30-00

and Indian Ocean to the East. The county covers an area of 12,609.7 km² (See maps: Sources: Kenya National Bureau of Statistics; Kilifi County Integrated Development Plan 2013-2017; Kilifi)

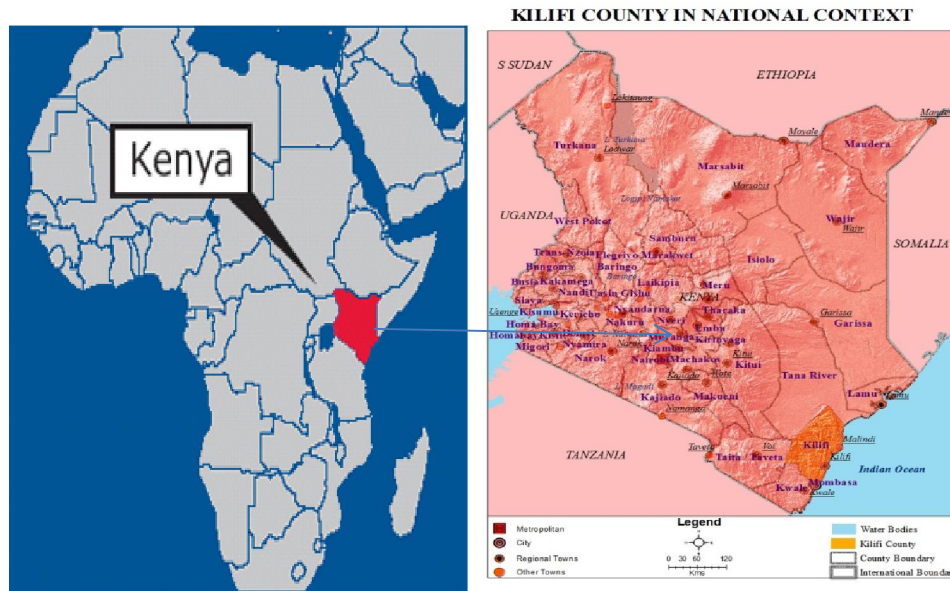


Figure 1: Source: www.knbs.go.ke

KILIFI COUNTY IN NATIONAL CONTEXT



Figure 2: Source: Kilifi County Integrated Development Plan 2013-2017

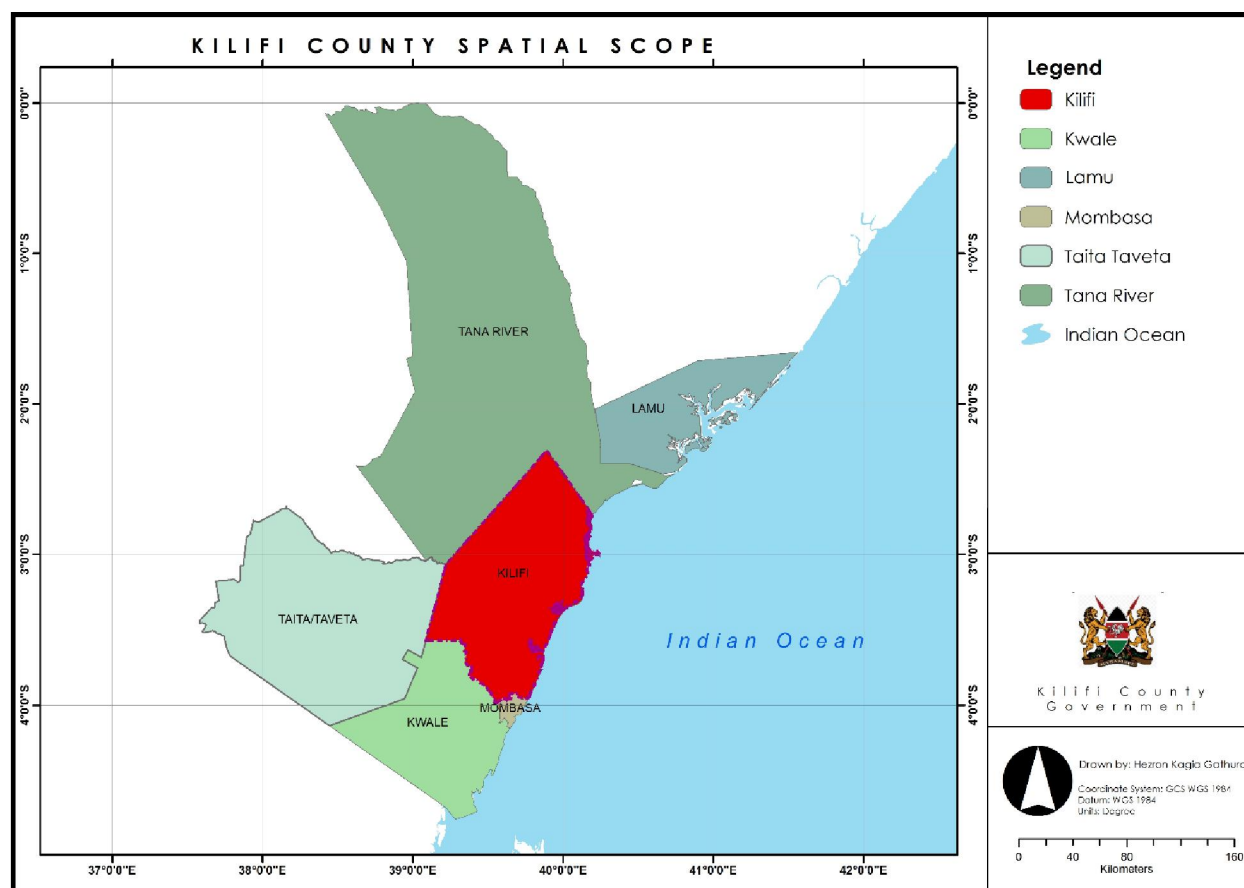


Figure 3: Source: Kilifi County Integrated Development Plan 2013-2017

Kilifi County is strategically located between the Standard Gauge Railway (SGR) line to its South and the LAPSET corridor to its North. These key transport features, once complete and operational, will give the County a major comparative advantage.

3.2 Climatic conditions

The county has an average rainfall of between 300mm in the hinterland to 1,300 mm at the coastal belt. The coastal belt receives an average annual rainfall of about 900mm to 1,100mm with marked decrease in intensity to the hinterland (KCIDP, 2013). Annual temperatures range between 21°C and 30°C in the coastal belt and between 34°C in the hinterland.

3.3 Administrative and Political Units

The county has seven sub-counties (also constituencies) namely Kaloleni, Rabai, Magarini, Malindi, Ganze, Kilifi South and Kilifi North, with Magarini sub-county being the largest while Rabai sub-county is the smallest. There are a total of 17 divisions, 54 locations and 165 sub-locations (See Table 1).

KILIFI COUNTY SUBCOUNTIES

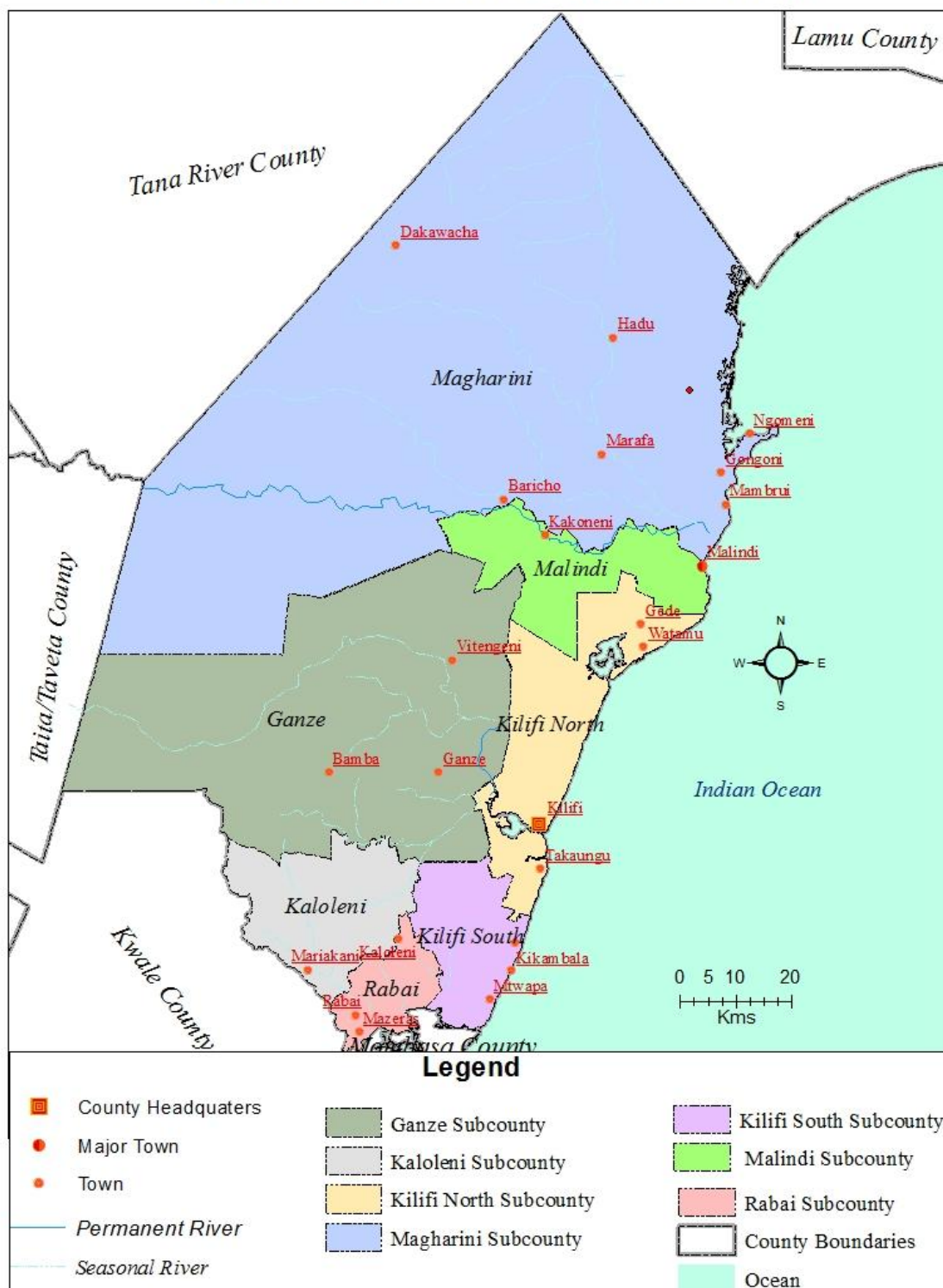


Figure 4 : Source : Kilifi county spatial plan, 2015

Table 1: Area of the County by Sub-county: Source: Kenya National Bureau of Statistics, Kilifi Office

Sub-county	Area(Km ²)	No. of divisions	No. of Locations	No. of sub Locations
Kilifi North	530.30	1	6	22
Kilifi South	400.60	2	6	16
Ganze	2941.60	4	16	48
Malindi	627.20	2	8	18
Magarini	6979.40	2	8	28
Kaloleni	686.40	5	11	21
Rabai	205.90	3	7	12
	12,271.4	19	62	165

3.4 Topography

The County has four major typographical features. The Coastal Plain, which generally lies below 30m above sea level, consists of beaches, mangrove forests, sand dunes and creeks. The second feature is the Foot Plateau. This is the western extension of the coastal plain which lies between 60m and 135m above sea level. The region is dissected by several small valleys. The Coastal Range, which falls beyond the Foot Plateau and has distinct low range of sandstone hills ranging between 150m to 450m above sea level, is the third major feature. The Nyika Plateau, the other key feature, rises from 150m to 300m above sea level west of the Coastal Range.

3.5 Population size and composition

The population of the county is at 1,098,603 (KNBS, 2009) consisting of 52% female and 48% male. With an annual population growth rate of 3.05%, it is estimated that the population will rise to 1,776,677 by the year 2025 (KCSP, 2013). As at 2012, the population of Kilifi County was estimated to be 1,217,892 which are projected to be 1,466,856 in 2017 at an annual growth rate of 3.05%.

3.6 Land tenure and investments in Kilifi

Some scholars and policy makers have argued that traditional land tenure is inefficient. Omotunde has argued that individualized tenure, generally defined as demarcation and registration of freehold title, is viewed as superior because owners are given incentives to use land most efficiently, hence, the view that land tenure reform may be an important precondition for economic development, and that this should be

an objective of government policy. He notes that many African countries, among them, Botswana, Kenya, Somalia, Uganda and Zimbabwe, have laws establishing some form of individualized land tenure (Omotunde, 1972). In Kenya, such laws include the Land Act, Land registration Act and the Community Land Act discussed above. Previously, the Land Adjudication Act, now repealed, guided adjudication of land rights within communal land in Kenya. The World Bank and the United States Agency for International Development have emphasized the need to promote freehold tenure with title registration, and the establishment of individual rights through land demarcation and survey.

Land tenure is a major development challenge in Kilifi County, with more than 60 % of the residents lacking titles. This has led to incidences of landlessness which in turn contributes to high poverty levels in the county (KCIDP, 2013). In recognition of the value individualization of tenure adds to development, the Kilifi County government has committed to providing titles to its residents as is reflected in its CIDP 2013-2017, the strategic plan and the annual budget estimates. A titling program, underpinned by the adjudication, demarcation, survey and registration of individual land parcels from communal land, through settlement schemes, was established. The first County government, in line with its CIDP, provided some Ksh.300 million (USD 3million) toward this program between 2013 and 2017.

3.6.1 Demarcation and survey of land in Kilifi County between 2013- 2017

Under this titling program and guided by the legal framework recently developed in the country, the County Government has established settlement schemes and adjudication sections in conjunction with the National Government so as to settle squatters and give titles to those owning rural communal land.

The process involves the gazettelement and declaration of the areas targeted, the adjudication or determination of individual claims of land, planning, demarcation, surveying and registration of the individual parcels of land. Committees made of local elders and technical officers initially listen to the various claims for land in an area and determine them. A register reflecting the bona fide land owners is then be prepared and verified. Planning is subsequently done to ensure that public the required public utility plots and commercial centres are provided. The demarcation and picking of boundaries, through appropriate survey methods, then follows. Ultimately, a map reflecting the spatial layout of all the parcels in a section is then prepared with a corresponding list of the size of each parcel. The map, the list of parcel sizes and the register of land owners are then be matched and passed on to the Land Registrar for

entry into the land register. The register is then used to prepare land ownership documents (title deeds) for the respective land owners for collection at their discretion.



Fig 5: A county official pre-sensitizes the community on the adjudication project in Ganze: Source--Authors



Fig 6: Members of Mitsedzini adjudication committee : Source--Authors

Over 40, 000 households have so far been covered under the program. The comparative impact of this county government driven program, against previous titling efforts, can be seen in the table and figure below.

Table 2 : Titling in Kilifi

Year	Total Area Surveyed in Ha.
2007-2012	2750
2013-2017	105470

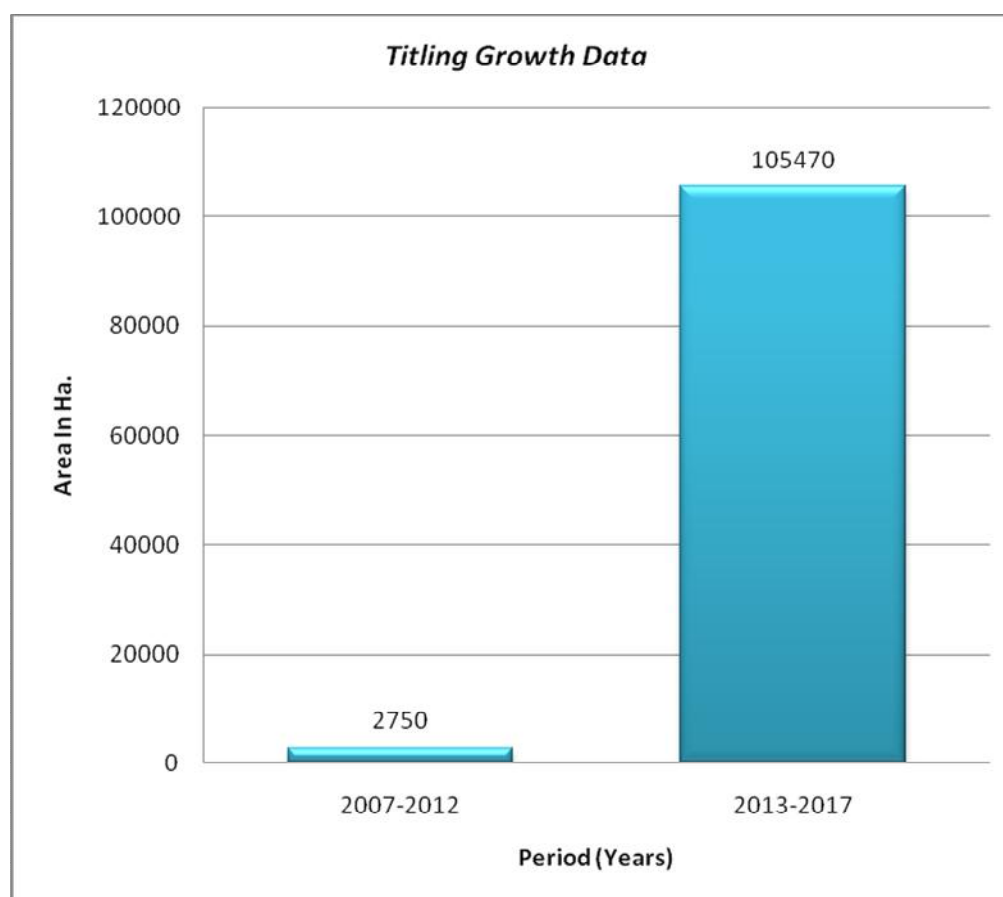


Fig. 7: Titling Growth Data: Source: Authors

In the period 2013-2017, demarcation and survey has been applied in 35 adjudication sections within Kilifi's seven Sub-Counties as detailed below:-

- Rabai: Miyuni/mleji A, Miyuni/mlejiB Jimba/Kaliangombe, Kaliangombe /Jimba and Madzimbani with a total of 8953 plots surveyed, and some titles issued.

- Magarini: Chakama settlement scheme, Baricho/Bungale, Adu/Kamale A and Adu/Kamale B and Dakacha/Baricho
- Ganze: Petanguo, Mitsedzini, Mwahera, MtsarawaTsatu,Tsangalaweni and Magogoni,
- Kilifi South: Kidutani settlement scheme, Mwembe Kati /Kasidi, Chengoni/ Mtomkuu, Gongoni, Bureni 1 and 2 settlement schemes.
- Kaloleni: Viragoni/Migwaleni, Kinarani /Mwamleka, Kitengwani andTsangatsini
- Malindi sub-county has Viriko. These adjudication sections and settlement schemes have a total of 40,011 surveyed plots.
- Kilifi South: Gongoni and Bureni 1 and 2 settlement schemes

From above, one appreciates that in the period between 2007 and 2012, only 2750 Ha of land was surveyed, adjudicated and issued with titles as compared to 105,470 Ha between 2013 to 2017, after the county governments came into place. The growth has been tremendous.



Figure 8: A survey team at work in one of the schemes: Source: Authors

3.6.2 Equity concerns: Gender and youth inclusion

In the traditional Mijikenda culture, widows, women and youth were never allowed to own land. However, Kenya's 2010 constitution, and the resultant laws, underscore the principle of non-discrimination in ownership of, and access to land. Therefore, during the above exercise, both women and youth were recognized and registered as land owners in the various adjudication sections. Widows, women, daughters and the youth are recognized during the adjudication exercises and registered as necessary. They can also buy and register land in their names independently. This is leading to a gradual social-economic empowerment of women and the youth. However, due to long term exclusion from the past, there is still a major gap in regard to ownership and access to land by women and youth in Kilifi. But the gradual application of the respective new constitutional and legal provisions in the current and future titling programmes will slowly reduce the gap. The inclusion of women and youth in key land

governance organs as required under the new legal frameworks also ensures constant oversight of the application of the inclusion provisions.

3.6.3 Reduction of disputes and conflicts

Mijikenda, the dominant ethnic groups in Kilifi, culturally believed in the use of witchcraft to resolve many issues. But the use of witchcraft on land and boundary dispute matters only aggravated land related conflicts, undermining tenure rights, leaving land idle and keeping away investments. Besides, this tenure insecurity demotivated the youth from investing on land and in many cases saw them migrate to the urban areas to seek alternative livelihoods.

However, during the implementation of the titling program, the adjudication of land rights and demarcation of boundaries provided an opportunity to resolve any land and boundary disputes regardless of any previous fears informed by cultural practices. Such cases would be tabled, heard and effectively determined. This has greatly reduced land conflicts in the adjudicated areas. This has precipitated an enabling environment which has seen people begin to settle in the completed regions, with an upsurge of economic and social development activities. Moreover, the youth are beginning to stay home and take interest in utilising the land beneficially for personal income. This emerging trend may gradually help to reduce the prevalence of youth migration into urban areas.



Fig 9: An adjudication committee resolving a boundary dispute in one of the sections: Source--Authors

3.6.4 Impact of improved tenure rights to land use and investments

(i) Improvement in land use

Prior to the titling program, much land was seemingly idle, with scant human settlement and activity. But there is now anecdotal evidence that human settlement is on the increase and that there is better utilization of land after the individualization of tenure. This will improve farm yields and hence the economic returns from the farms and hence the gross domestic production of the county.

(ii) Utilization of public utility plots and commercial centres

The provision of public utility plots and commercial centres during the titling program has been a boon to residents and development. Public plots for schools, health centres, cultural/religious purposes, recreation and other purposes have been well distributed within the adjudicated sections and provide a much more orderly manner of promoting social support facilities. The commercial centres have provided attraction to the people who would otherwise proceed into the large urban centres of Malindi, Kilifi and Mombasa, aggravating congestion. It is much easier for the county government to provide services to the new well planned centres. Because of the opportunity to enjoy services such as power, piped water and reliable transport, the new commercial centres are as a result acting like the alternative growth nodes. Besides helping to decongest the existing urban centres, this is helping reorient the redistribution of resources into the rural hinterland where most of the new centres are, resulting in a better social-economic balance and improved dividend in regional equity. A new project known as Kenya-offgrid Solar Access Project (K-OSAP), between the county government of Kilifi and the World Bank, aimed at providing power to residents of Kilifi, is further helping to buttress social-economic growth in the newly adjudicated areas.

(iii) Improved Investments

Kilifi County is home to a number of industries. These include firms such as Athi River Mining Company in Rabai, Mabati Rolling Mills in Mariakani and Mombasa Cement in Vipingo. There is also a cashew nut processing factory, a Sisal Company at Vipingo and salt harvesting in Gongon, Marereni and Kurawa. There are Light industries in Mazeras too.

All of the industries are however located within the 10 mile coastal strip that has enjoyed secure land tenure since it got titles after the application of the 1908 Land Titles Act over the section between Mazeras and Mariakani as shown in the map below.

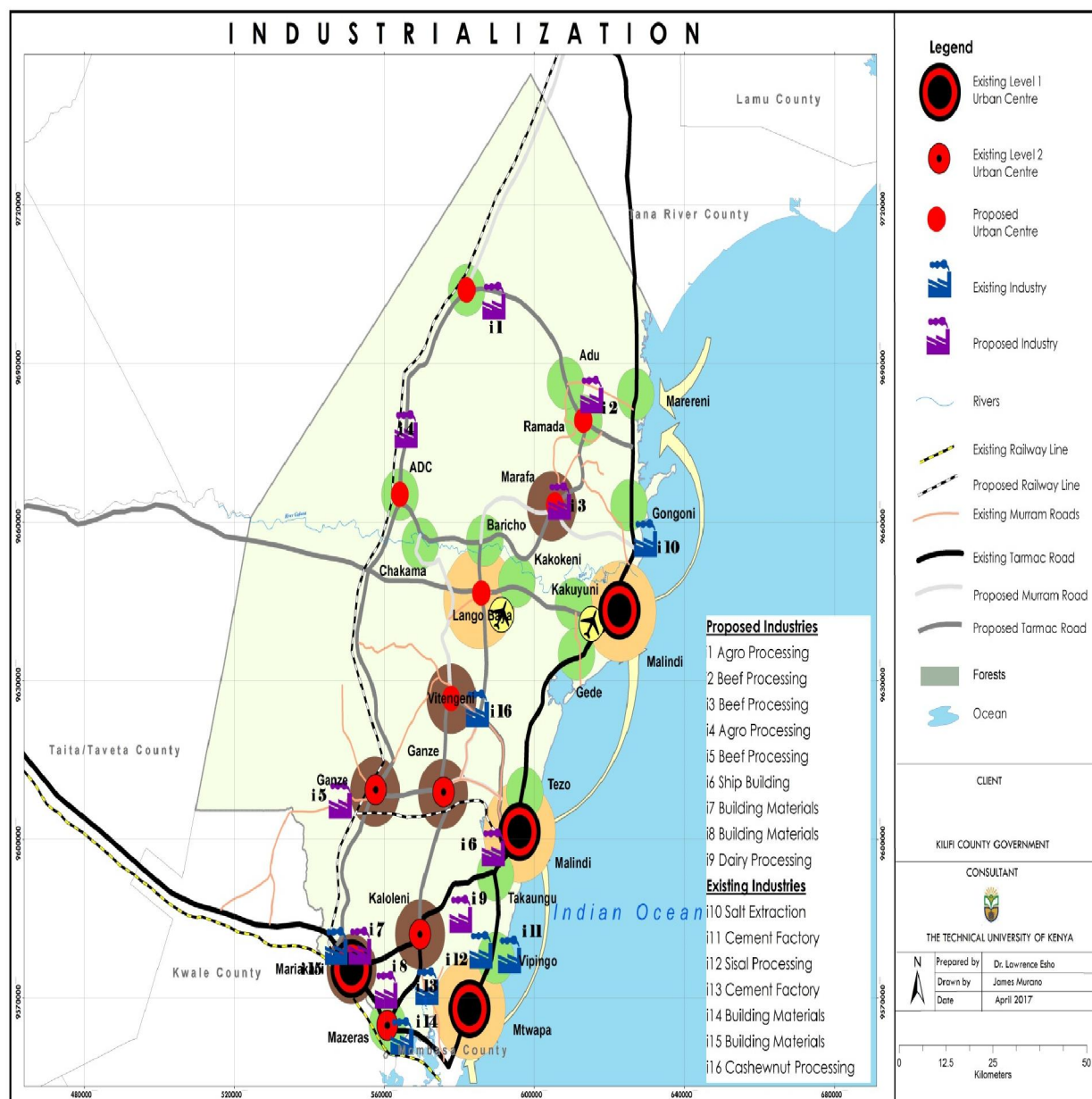


Figure 10: Source: Kilifi county spatial plan, 2015

The issuance of title deeds to individual proprietors has evidently incentivised investments. Investors are now able to confidently buy or lease land for investments given the secure tenure rights enjoyed by the land owners after receiving ownership documents. There is now a growing demand for land for commercial farming and industries. Where investment interests fall on several pieces of registered agricultural land, investors have been applying to the county government for the consolidation and change

of use of such land so that they are able to develop it as one parcel and for the use intended. The new ventures, and the associated activities, have provided job opportunities and economic benefits to particularly Rabai and Kaloleni Sub-Counties. The cases below help to illustrate how the enhanced tenure security in the County has driven fresh investor interests in Magarini and Rabai Sub-Counties.

a) Del Monte Kenya Ltd, Magarini Sub County

Del Monte Kenya Ltd, Kenya's largest exporter of pineapple products, proposes to invest in large scale pineapple farming project in the Baricho/Dakacha area in Magarini Sub-County of Kilifi County. The Company proposes to develop a pineapple plantation of approximately 6,000 hectares (about 15,000 acres) in Baricho and Dakacha Sub Locations of Bungale Location, Magarini Sub-County, Kilifi County.

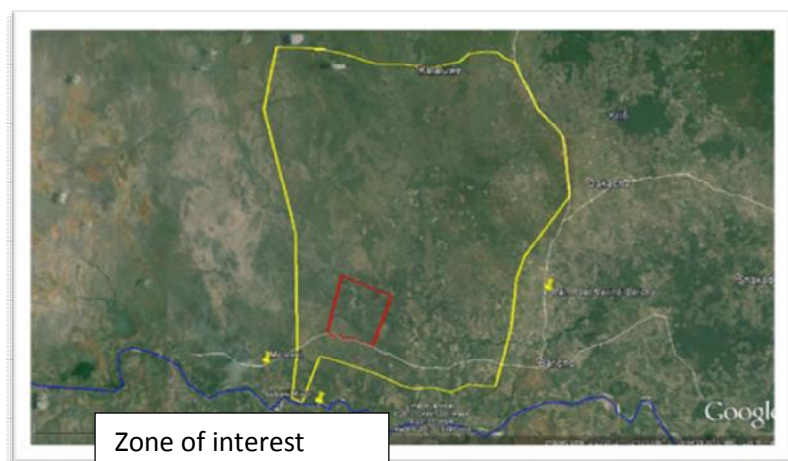


Figure 11: Source: Del Monte Ltd



Figure 12: Source: Del Monte Ltd

The County government facilitated the demarcation and survey of their area of interest. This, project, which resulted in a total of 1327 plots, was completed in 2016 at a cost of Ksh 5 million (approx. USD 50, 000). Negotiations to enter into lease agreements with the respective landowners are now at an advanced stage and the company is poised to start operations once these are concluded.

b) Jumbo Steel Mills Company Ltd, Rabai Sub-County

After the completion of the Mwawesa Adjudication Section in Rabai, some beneficiaries of the registered plots have sold out to Jumbo Steel Mills Company Ltd. Jumbo is now in the process of constructing a steel factory (see photos below). The Company, which signed an enabling agreement with the County government late last year, is expected to employ close to 300 local people as the first phase which kicks off later this year.



Figure 13: Source: Authors

In the pictures above, one can see the steel factory coming up as well part of the homestead that belonged to the land owner who sold part of his land to the steel investor.

c) Athi River Mining Company in Kaloleni Sub County

Even prior to the recent County land adjudication initiative, earlier titling efforts in Kaloleni Sub-County had driven investor interests to establish Athi River Mining Company, a major cement manufacturing firm. The Company bought out agricultural land from rural farmers, changed user and established the factory (see photos). According to its management, the plant employs 1,103 staff and supports another ten thousand people (10, 000).



Figure 14: Source : Authors

The factories located amidst rural agricultural areas-Athi River Mining Company in Kambe Ribe, Rabai Sub-county.



Figure 15: Source: Authors

4. CONCLUSION

Kenya has made good progress in its land reforms, developing policy, constitutional and legal frameworks to drive working strategies, programmes and projects at institutional and community level. The reform frameworks require that equity in access to land, the security of tenure rights, sustainability and production, transparency and effective administration, conservation and protection of ecologically sensitive areas govern land management in Kenya. The principles also include the elimination of gender discrimination, use of alternative dispute resolution and the need for projects whose benefits also help communities. These principles have been incorporated in the laws that govern programmes and projects around the country. Subsequent national, county and Sub-county projects are therefore governed by these principles.

The implementation of the titling project in Kilifi was therefore guided by the provisions of Kenya's constitution and laws. Some of these include protection of tenure rights through recognition, survey and registration; the need to observe gender and generational equity by recognising the rights of women and youth and the use of alternative dispute resolution as was done by adjudication teams without resorting to the courts. The benefits from investments through employment, commerce and the earnings by the county government as is seen from the projects in Rabai and Magarini Sub-Counties also resonate with the reform provisions.

The county investment in titling has seen the completed sections benefit from improved tenure security which has subsequently motivated improved land utilization and hence increased agricultural production, reduction in land and related disputes and increased human settlements. The systematic planning associated with the project has also provided land for public utilities and commercial centres. This has seen the emergence of new commercial centres which have provided attraction away from the existing major towns of Malindi, Kilifi and Mombasa, helping to reduce the rural migration into these already congested towns. The secure land rights have also been a boon to investments. Investors are now confident to buy or lease land for their ventures of interest. Some of the newly established ventures have been in commercial farming and agro processing factory in Magarini Sub-county and in industrial manufacturing in Rabai. These ventures are helping to provide job opportunities to local people, providing revenue streams to entrepreneurs who supply services and consumables to the companies and have also been an extra source of revenue to the county government. The net effect of the investments will be increased per capita income in the respective counties and an improvement in the GDP of Kilifi County.

5. RECOMMENDATIONS

Given the dividends to the individual residents of Kilifi, and to the County itself, discussed above, the tenure security enhancement projects in Kilifi should be continued. In this regard, the County should make effort to have the project scaled up at planning and budgetary level through the county executive committee and the county assembly. This will be a good demonstration of commitment.

Development Partners keen on development projects that promote the improvement of tenure rights and livelihoods, and also gender equity, should seize the opportunity demonstrated by the commitment of Kilifi County and consider establishing partnerships to promote this initiative. Local and foreign investors may also take note that tenure rights beyond the ten mile coastal strip in Kilifi have been undergoing systematic improvement. Given the optimal geographical location of Kilifi County, with the Standard Gauge Railway (SGR) to the West, the Lamu Port-Southern Sudan-Ethiopia (LAPSSET) Corridor to the East and the Indian Ocean Coastline to the South East, local and foreign investors have a great opportunity and may wish to approach the County government for consideration. They may take note that the County Spatial Plan for instance recognises and allows for the establishment of agro-processing, beef processing, ship building and dairy processing ventures.

The county government should also document the experiences, challenges and lessons learnt during the implementation of the completed adjudication sections for use by other county governments and interested scholars. This should start immediately to avoid loss of memory. It is also quite clear that the new influx of investment ventures will see the co-existence of industrial and manufacturing firms with rural or residential neighbourhoods. It is therefore likely that effluents may pose threats that require appropriate environmental mitigation strategies to go hand in hand with the establishment of the industries and factories. The county government will need to have a good team to evaluate such mitigation plans at the project approval stage.

References

1. AUC-ECA-AfDB Consortium (2010), *Framework and Guidelines on Land Policy in Africa*, Addis Ababa, Addis Ababa, Ethiopia, 2010.
2. Food and Agricultural Organization of the United Nations, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, Rome, 2012

3. <http://www.ardhi.go.ke/?p=337>
4. Omotunde, E. G. J. (1972) “Economic Analysis, The Legal Framework and Land Tenure Systems”, The Journal of Law and Economics 15, No.1:259-276
5. Republic of Kenya, *Kilifi County Integrated Development Plan, 2013-2017*, Government Printer, Nairobi
6. Republic of Kenya, *Kilifi County Resource Mapping Report, 2015*, Government Printer, Nairobi
7. Republic of Kenya, *Kilifi County Spatial Plan, 2015*, Government Printer, Nairobi
8. Republic of Kenya, *Sessional Paper No 3 of 2009 on National Land Policy*, Government Printers, Nairobi, 2009
9. Republic of Kenya, *The Constitution of Kenya 2010*, Government Printers, Nairobi
10. Republic of Kenya, *The Environment and Land Court Act No 19 of 2011*, Government Printers, Nairobi
11. Republic of Kenya, *The Land Act, 2012*, Government Printers, Nairobi,
12. Republic of Kenya, *The Land Registration Act, 2012*, Government Printers, Nairobi
13. Republic of Kenya, *The National Land Commission Act, 2012*, Government Printers, Nairobi
14. Republic of Kenya, *The Community Land Act, 2016*, Government Printers, Nairobi
15. Republic of Kenya, *The Land Laws (Amendment) Act, 2016*, Government Printers, Nairobi
16. Republic of Kenya, *The Community Land Regulations, 2017*, Government Printers, Nairobi
17. Republic of Kenya, *The Land Registration (General) Regulations, 2017*, Government Printers, Nairobi
18. Republic of Kenya, *The Land Regulations, 2017*, Government Printers, Nairobi

List of tables

Table 1	Sizes of Kilifi Sub-counties	13
Table 2	Titling growth in Kilifi County	15

List of figures

Figure 1	Relative position of Kenya in Africa	9
Figure 2	Kenya: Counties	10

Figure 3	Kenya Coast Counties	11
Figure 4	Kilifi Sub-counties	12
Figure 5	A county official pre-sensitizes the community	15
Figure 6	Members of Mitsedzini adjudication committee	15
Figure 7	Titling growth in Kilifi County	16
Figure 8	A survey team at work	18
Figure 9	An adjudication committee resolving a boundary dispute	19
Figure 10	Industrialization in Kilifi	21
Figure 11	Zone of interest: commercial farming	22
Figure 12	Reconnaissance for commercial farming	22
Figure 13	Upcoming Steel Industry, Rabai	23
Figure 14	Cement Processing Factory, Rabai	23
Figure 15	Cement Processing Factory, Rabai	25