

Challenges of Land Acquisition for Infrastructure in Kenya: *Case Study of the Kisii-Awendo Power Wayleave*

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Abstract

Land acquisition for infrastructure development can pose challenges in developing countries. This study explored the challenges faced by landowners impacted by the Kisii-Awendo power wayleave acquisition in Kenya. A descriptive research design was used to target 276 project-affected persons through a stratified random sampling strategy. Findings revealed concerns about inadequate compensation (16.6%), poor communication (14.5%), limitations due to illiteracy (12.5%), and financial constraints (12.1%). These issues highlight the limitations of theoretical frameworks like Neoclassical Economic Theory and Lockean Property Theory in addressing real-world complexities. Recommendations for a more equitable and efficient process include improved communication strategies, financial and legal aid for landowners, transparent compensation practices, and literacy support programs. By implementing these recommendations, land acquisition projects can achieve greater fairness and social justice for affected landowners, facilitating the successful completion of vital infrastructure projects.

Keywords: Challenges, land acquisition, infrastructure, Kenya, Kisii-Awendo, power wayleave

INTRODUCTION

Governments possess the legal authority to seize private land for public use without the property owner's consent, a process termed compulsory acquisition (Keith et al., 2008). This power, also known as eminent domain, expropriation, takings, or compulsory purchase, varies in terminology across different legal systems. Significantly, compulsory acquisition serves as a critical tool for governments in obtaining land necessary for essential infrastructure projects, particularly when the private land market fails to adequately meet public needs.

Land is widely recognized as a fundamental asset for wealth generation across many societies. Often imbued with cultural and spiritual significance, land ownership grants individuals substantial control over those dependent on it for sustenance or shelter. Consequently, the concepts of land as property and land as a source of power are inextricably linked.

Land ownership and control are fundamental to economic power, which often underpins social and

political influence. Kenya's founding president, Jomo Kenyatta, underscored the nation's reliance on land as a cornerstone of its identity, economy, and survival (Harbeson, 1971). Unlike other resources, land is finite. As the foundation for all human activities, especially in agricultural societies like Kenya, land is indispensable. This critical role presents significant challenges for government agencies such as Kenya Power, Kenya Pipeline, and road construction authorities when acquiring land for crucial infrastructure projects.

Due to its significant economic and social value, acquiring private land for public projects is often challenging. The government's authority to forcibly acquire private property for public use is known as eminent domain. This power, recognized globally, allows states to seize land for the public good. In many developing nations, including Kenya, the legal framework governing eminent domain is rooted in colonial laws (Muriithi, 2006). Kenya's Land Act of 2012 and the National Land Commission Act of 2012 outline the process for acquiring land for infrastructure, with the National

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Land Commission responsible for overseeing the process and ensuring fair compensation.

The Kenyan Constitution grants the government the authority to compulsorily acquire private land for public benefit, provided that property owners receive prompt and full compensation (Republic of Kenya, 2010). The procedures for such acquisitions were previously outlined in the Land Acquisition Act (Cap 295), but this legislation has since been replaced by Part VIII of the Land Act of 2012 (Republic of Kenya, 2012).

Developing countries face the dilemma of adapting expropriation systems to provide collective goods without undermining private property rights. In market economies, compulsory acquisition systems encounter two main challenges. First, they must establish procedures that ensure the peaceful enjoyment of private property is not breached, thereby upholding fundamental human rights. Second, they must provide adequate and prompt compensation to property owners so that they are not adversely affected by the expropriation process (Muriithi, 2006).

While laws in Kenya and many other nations authorize the government to forcibly acquire private land for public projects, the process is often complex, time-consuming, and expensive. Even when fair compensation and efficient procedures are in place, compulsory land acquisition inherently disrupts people's lives. Poorly managed acquisition processes can have severe economic, social, and political consequences, including decreased land security, reduced investment, and weakened land markets, as well as creating opportunities for corruption (Food and Agriculture Organization of the United Nations, 2009).

Acquiring private land for new power connections presents unique challenges compared to road projects, which often have designated expansion areas (Munubi, 2016). Disputes over land surveys, compensation amounts, and mismanagement of land ownership records by government agencies frequently hinder power infrastructure development. These obstacles contribute to project delays and increased costs for critical infrastructure projects intended to benefit the entire nation. Consequently, understanding the complexities faced by both land acquisition authorities and affected landowners is essential for

efficient project implementation and minimizing negative impacts on people and the economy.

THEORY

The Concept of Compulsory Land Acquisition

Governments possess the inherent authority to seize private property for public use without the owner's consent, a power known by various terms such as eminent domain, compulsory purchase, resumption, or expropriation (Keith et al., 2008; Cernea, 1999; Nabutola, 2009). This power allows the state to acquire land for direct government use or to delegate it to third parties for public services, infrastructure, or economic development. Common examples include land acquisition for public utilities, highways, and railways.

Eminent domain is a controversial legal concept because it creates a conflict between the legal right to private property ownership and the government's power to forcibly seize that property (Cernea, 1997). This contradiction is akin to simultaneously protecting and taking away property rights. While the state has a legal duty to safeguard private property, it also has a moral responsibility to ensure land is available for the broader public good, including the preservation of other life forms.

Compulsory land acquisition necessitates a delicate balance between societal needs and the protection of individual property rights and land tenure security. While fair compensation and efficient processes are essential, forcibly displacing people from their homes, livelihoods, and communities inevitably causes significant human suffering. Poorly designed or implemented processes can result in substantial economic, social, and political costs, which contradict the key pillars of sustainable development (Cernea, 2000; Keith et al., 2008).

Sustainable development necessitates government provision of public amenities and infrastructure to safeguard public safety, health, and well-being, while also stimulating economic growth and protecting the environment. Acquiring appropriate land is a crucial step in this process. However, land is scarce and may not be available for purchase when needed. To address this, governments exercise the power of compulsory acquisition, compelling owners to sell their land

for specific public purposes. This exercise of power often brings losses to affected individuals, extending beyond economic loss to include social, religious, and cultural losses (Otubu, 2012). Ensuring efficient, fair, and legitimate procedures for land or wayleave acquisition is critical for the effective use of compulsory acquisition.

Theoretical Underpinning

The Lockean Property Theory and Neoclassical Economic Theory offer valuable frameworks for examining the complexities of land acquisition for infrastructure projects in Kenya, particularly in the context of the Kisii-Awendo power wayleave. These theoretical perspectives can provide a comprehensive analysis of both the ethical and economic dimensions of this issue, offering a robust understanding of the challenges involved in the specific case.

Neo-classical Economic Theory

Neo-classical Economic Theory is relevant to the research on land acquisition for infrastructure in Kenya, specifically the Kisii-Awendo power wayleave, as it offers a framework for analyzing the allocation of resources to maximize utility and efficiency. This theory helps assess the economic implications of land acquisition, including determining fair compensation rates, understanding the impact on land values, and evaluating the cost-benefit analysis of the infrastructure project (Agboola, 2015). By applying this theory, the research can propose improvements to current land acquisition processes to ensure that land is acquired efficiently, with minimal negative impact on landowners and optimal benefits for the broader society.

Neoclassical economic theory views land ownership through an individualistic lens. Johnson (1972) explored how different land tenure systems impact wealth creation. The theory posits that optimal land tenure systems clearly define and allocate property rights, incentivize efficient land use, and minimize restrictions on land sales to stimulate investment. According to Johnson, unclear land rights increase transaction costs, hindering land productivity. Neoclassical economists advocate for well-defined property rights to reduce transaction costs and maximize land returns. They emphasize the importance of individual incentives, arguing that people will use land efficiently when they directly benefit or suffer from the consequences of

their decisions (Agboola, 2015).

Neoclassical economists argue that converting land ownership to freehold titles decreases the costs associated with transferring land ownership. By eliminating restrictions on land sales, this system encourages transactions where the benefits outweigh the costs. This market-driven approach leads to land being allocated to its most productive use, as those who can generate the highest returns compete for ownership (Colander, 2000). Individualized land tenure is considered more efficient due to increased security, reduced legal disputes, and optimized land utilization. This economic perspective explains patterns of land fragmentation and use changes, often driven by the pursuit of financial gain and perceived efficiency, rather than solely inheritance factors.

The Lockean Property Theory

This theory is relevant to the research on land acquisition for infrastructure in Kenya, particularly the Kisii-Awendo power wayleave, as it emphasizes the sanctity of private property rights derived from one's labour. This theory supports the need for fair compensation and procedural fairness in compulsory land acquisition, ensuring that landowners' rights are respected. It highlights the moral and ethical considerations of displacing individuals for public projects and advocating for just and equitable treatment to mitigate the human and social costs involved (Ashcraft, 1987; Locke, 1980).

John Locke's theory of property rights posits that individuals possess inherent authority to establish property ownership without relying on societal agreements (Locke, 1960). In a hypothetical state of nature devoid of government, money, or trade, individuals could freely acquire both moveable and immovable property (Locke, 1980). Locke argued that these natural rights, including property rights, must be upheld by any subsequent government (Locke, 1980).

Locke envisioned a primitive society with abundant but unclaimed resources. In this context, individuals had an equal right to utilize these resources. The foundation of property ownership, according to Locke, lies in the application of individual labour to unclaimed resources. For instance, cultivating land through labour establishes ownership, while mere hunting and

gathering do not (Ashcraft, 1987; Locke, 1980).

Challenges of Land Acquisition for Infrastructure

Legal and Procedural Complexities: One of the foremost challenges in land acquisition for infrastructure is navigating the legal and procedural complexities. Laws governing land acquisition vary widely between and within countries, often involving a maze of regulations that must be meticulously followed to avoid legal disputes. In many cases, the process requires coordination among multiple government agencies, each with its own set of requirements and bureaucratic hurdles (Cernea, 2000; Keith et. al., 2008). In Kenya, for instance, the process involves the National Land Commission, local authorities, and various ministries. These overlapping jurisdictions can lead to delays, increased costs, and inefficiencies in acquiring the necessary land for infrastructure projects.

Inadequate Compensation and Displacement Issues: Ensuring fair compensation for landowners is another significant challenge. Often, the compensation offered is perceived as inadequate, failing to reflect the true market value of the land or the socio-economic impact on the displaced individuals. This inadequacy can lead to resistance from landowners, prolonged negotiations, and even legal battles. Displacement also brings about significant social costs. People who are displaced from their homes, farms, and businesses face considerable disruption to their lives and livelihoods (Keith et. al., 2008; Museleku, 2021). This can result in social unrest, loss of income, and community disintegration, posing further obstacles to the smooth execution of infrastructure projects.

Environmental and Social Impacts: Land acquisition for infrastructure development often has profound environmental and social impacts. Large-scale projects can lead to deforestation, loss of biodiversity, and disruption of local ecosystems. These environmental consequences not only affect the natural habitat but also the people who depend on these resources for their livelihoods. Additionally, infrastructure projects can disrupt social networks and community structures, especially in rural and indigenous areas (Museleku, 2021; Munubi, 2016). Addressing these impacts requires comprehensive environmental and

social impact assessments and the development of mitigation strategies, which can add to the complexity and cost of the acquisition process.

Political and Corruption Issues: Political interference and corruption are significant challenges in the land acquisition process. Politicians may use their influence to sway decisions for personal or political gain, often leading to biased and unfair acquisition practices. Corruption can manifest in various forms, including bribery, favouritism, and manipulation of property records. Such practices undermine public trust, delay projects, and escalate costs. In some instances, powerful individuals or groups may exploit the land acquisition process to benefit themselves at the expense of the general population, leading to inequitable outcomes and public discontent (Keith et. al., 2008; Munubi, 2016). Addressing these issues requires robust governance frameworks, transparency, and accountability in the land acquisition process.

RESEARCH METHODS

We employed a descriptive research design to comprehensively capture the current challenges faced by landowners impacted by the Kisii-Awendo power wayleave acquisition (Kumar, 2005). The descriptive design was chosen for this study because it allowed for a thorough and detailed examination of the specific challenges associated with land acquisition for infrastructure in the Kisii-Awendo region. It provided valuable insights that can inform future research, policy, and practice. This involved collecting relevant data to gain a rich understanding of the situation. A quantitative survey was conducted to measure specific variables related to the challenges faced during the land acquisition process.

Recognizing the potential for low literacy rates amongst some respondents, researcher-administered questionnaires were utilized. This approach allowed for clarification and ensured accurate data collection (Alreck & Settle, 2003). However, steps were taken to minimize potential bias introduced by the researcher, such as standardized question delivery and response recording.

Target Population

This study targeted Project Affected Persons

(PAPs) whose private land parcels are traversed by the Kisii-Awendo power transmission line. Public land was excluded due to its distinct impact on land rights. The total population of PAPs with ownership or use rights to the affected land was estimated to be 975. A sampling method was employed to select a representative group of participants from this population for further investigation.

Sampling Strategy and Sample Size

It was not feasible to study all Project Affected Persons (PAPs) across the 44-kilometer stretch of the Kisii-Awendo transmission line due to time and budget constraints. Therefore, a stratified random sampling approach was employed. The 8 land registration sections traversed by the line served as strata. This ensured representation from diverse areas and minimized bias due to factors like land valuation or cultural aspects that might differ across sections. A standard sample size calculation method proposed by Frankfort-Nachmias & Nachmias, (1996), (1996) and online sample size calculators, for instance (Larry, 2021) were used to select 276 PAPs spread across the 8 strata, at a 95% confidence level and 50% population proportion. The study had a response rate of 73 percent, which was adequate for analysis and generalization purposes (Mugenda & Mugenda, 2003).

Data Collection Methods

The primary data collection method involved researcher-administered questionnaires.

Respondents were offered assistance in clarifying any questions they encountered. To ensure clear communication across dialects, local research assistants were employed. These assistants received training in research methods and ethical data collection practices. The questionnaires incorporated a mix of structured and open-ended questions. The open-ended format allowed respondents to elaborate freely on their experiences and perspectives, potentially revealing unforeseen but valuable insights into the challenges faced during land acquisition (Creswell, 2003).

Data Analysis

Data was processed continuously throughout and after collection, being recorded in summaries and notebooks. Interview data was thematically categorized based on the research goals. All data underwent scrutiny for accuracy and consistency. Quantitative data was statistically summarized, while results were visualized using percentages in tables to aid comparison and understanding.

RESULTS

Challenges of Land Acquisition in Kisii-Awendo Power Wayleave

The results are indicated in **Table 1**. This study identified several key challenges faced by landowners impacted by the Kisii-Awendo power wayleave acquisition. A significant concern was inadequate compensation (16.6%). Landowners felt the awarded compensation did not reflect

TABLE 1
 Summary of the results

Challenge	Frequency/ score	Percentage	Ranking
Uncooperative Government Officers	82	9.8%	7
Inadequate data	89	10.7%	5
Inadequate communication channels	121	14.5%	2
Political interference	38	4.6%	9
Fear of government/government intimidation	74	8.9%	8
Literacy levels	104	12.5%	3
Poverty	101	12.1%	4
Inadequate assistance from professionals	86	10.3%	6
Inadequate compensation	138	16.6%	1
Total	833	100%	

Source: Field survey, 2022/2023

potential land value increases due to delayed payments. Lack of proper communication channels (14.5%) also emerged as a major issue. Limited communication and awareness about the project and its impact on the local community led to disruption and complaints from affected landowners.

Illiteracy levels (12.5%) also played a role, as landowners who could not read relied on others to understand the acquisition process, potentially leading to misunderstandings. Financial constraints further exacerbated these issues. Many affected landowners resided in rural areas with high poverty levels (12.1%). This limited their ability to hire private valuers and legal advocates for assistance (10.3%).

Difficulties in accessing data (10.7%) to support land claims were another challenge. Respondents mentioned the secrecy surrounding land sales in the area and limited access to land registry records. Fear of authority and political interference were also mentioned as concerns, with a relatively lower percentage of respondents citing political interference (8.9%).

Therefore, the study revealed significant challenges for landowners impacted by the Kisii-Awendo power wayleave acquisition. Landowners felt inadequately compensated (16.6%) due to potential land value increases during delays. Poor communication (14.5%) limited awareness and caused disruptions, while illiteracy (12.5%) among landowners led to potential misunderstandings during the process. Financial constraints were another hurdle, as many affected landowners came from rural areas with high poverty levels (12.1%). These findings highlight the need for improved communication, transparent compensation practices, and support for those facing financial or literacy limitations during land acquisition projects.

DISCUSSION

The study has identified challenges of land acquisition in Kisii-Awendo Power Wayleave in Kenya. Neo-classical economic theory posits that clearly defined property rights, efficient transaction mechanisms, and minimal restrictions on land sales are essential for maximizing wealth and resource use. The findings of this study highlight

several inconsistencies with these principles:

Inadequate Compensation (16.6%): Neo-classical theory emphasizes that property rights should be well-defined and that transactions should reflect the land's true market value to maximize economic efficiency. The perception of inadequate compensation among landowners suggests a failure to achieve this. Delays in the compensation process potentially led to an increase in land values, indicating that the compensation did not reflect the current market value. This misalignment can result in inefficient land use and decreased economic incentives for landowners.

A valuer can convince landowners that the compensation is correct and has made all necessary considerations arising from landownership by clearly explaining the valuation methodology, including the criteria used to determine the land's market value. This would involve detailing the factors considered in the valuation, such as current market trends, comparable land sales, and any unique attributes of the land in question, through stakeholder engagement and participation. However, the valuation process is restricted by the existing regulatory framework, which dictates the adoption of a market approach to valuation, which is inadequate (Cernea, 2000; Keith et. al. 2008; Munubi, 2016; Museleku, 2021).

Poor Communication (14.5%): Efficient land transactions, as advocated by neo-classical theory, require transparent and effective communication. Poor communication that limits awareness among landowners disrupts the market process by creating uncertainty and potentially leading to suboptimal decisions by landowners. This disruption can increase transaction costs and reduce the overall efficiency of the land acquisition process.

Illiteracy and Misunderstandings (12.5%): Neo-classical theory assumes rational decision-making by informed individuals. However, high levels of illiteracy among landowners lead to misunderstandings, preventing them from making informed decisions about land transactions. This gap in understanding can hinder the optimal allocation of resources, as landowners may not fully comprehend the terms or potential benefits of the acquisition.

Financial Constraints (12.1%): Neo-classical

economics suggests that land should be used by those who can utilize it most efficiently. However, financial constraints faced by rural, impoverished landowners limit their ability to invest in or leverage their land effectively. This situation undermines the potential for maximizing the marginal productivity of the land, as those who might make better use of the land cannot do so due to economic barriers.

Lockean property theory asserts that individuals have natural rights to property acquired through their labour and that any government must respect these rights. The findings of this study also reflect several aspects related to this theory:

Inadequate Compensation (16.6%): According to Locke, property rights include the right to fair compensation when property is appropriated by the state. The perception of inadequate compensation among landowners suggests a violation of these natural rights. If landowners do not receive compensation that reflects the true value of their land, it undermines their rights to the fruits of their labour.

Poor Communication (14.5%): Locke's theory emphasizes the importance of consent and understanding in property transactions. Poor communication that limits landowners' awareness and understanding of the acquisition process suggests that their consent may not be fully informed or voluntary. This lack of informed consent can be seen as a violation of their property rights.

Illiteracy and Misunderstandings (12.5%): Lockean theory supports the idea that property rights should be accessible and understandable to all individuals. High illiteracy rates and resultant misunderstandings indicate that many landowners are not fully able to exercise their property rights due to a lack of information and understanding, which undermines the principles of natural rights and fair treatment.

Financial Constraints (12.1%): Locke believed that property ownership should enable individuals to sustain themselves and improve their welfare. Financial constraints faced by impoverished landowners suggest that the current land acquisition process may not adequately support this principle. If landowners are not fairly

compensated or supported financially, their ability to benefit from their property is compromised, contravening Lockean ideals.

Therefore, the findings reveal significant challenges in the land acquisition process for the Kisii-Awendo power wayleave that are inconsistent with the principles of both neo-classical economic theory and Lockean property theory. To address these discrepancies, it is crucial to enhance communication, ensure transparent and fair compensation practices, and provide support for landowners facing financial or literacy limitations. By aligning the land acquisition process more closely with these theoretical frameworks, the efficiency, fairness, and overall effectiveness of such projects can be improved.

CONCLUSION AND RECOMMENDATIONS

This study examined the difficulties faced by landowners affected by the acquisition of land for the Kisii-Awendo power wayleave in Kenya. Key issues emerged from the research. Firstly, landowners expressed widespread dissatisfaction with the compensation provided. They argued that the awarded amounts did not accurately reflect the potential increase in land value, especially considering payment delays. Secondly, poor communication regarding the project and its implications for the local community led to significant disruptions and grievances among residents. Finally, the challenges associated with illiteracy and financial constraints hindered landowners' ability to comprehend the acquisition process and access necessary support.

These findings underscore the limitations of theoretical frameworks like Neoclassical Economic Theory and Lockean Property Theory in addressing the complexities of land acquisition in developing countries. To mitigate these issues and ensure a fairer, more efficient land acquisition process, several recommendations are proposed.

Compensation for land acquisition should go beyond just the economic value of the land to include other significant factors, especially when dealing with ancestral land. These considerations should include cultural value, relocation assistance, and livelihood restoration. Holistic compensation models such as total economic value, full replacement costs, and livelihood

restoration plans should be adopted by valuers, and the legal framework aligned accordingly.

Enhanced communication strategies are essential to inform landowners about their rights, the project's objectives, and the compensation procedures. Providing financial and legal aid can help to level the playing field and guarantee fair treatment for landowners during negotiations. Transparent compensation practices that accurately reflect potential land value changes and are disbursed promptly are crucial for preventing disputes. Additionally, offering literacy programs or adopting alternative communication methods can improve understanding of the process for all landowners.

By implementing these recommendations, land acquisition projects can move closer to the ideals of fairness and efficiency enshrined in economic and property rights theories. This approach can minimize disruptions, promote social justice for affected landowners, and ultimately contribute to the successful completion of infrastructure projects such as the Kisii-Awendo power line.

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