

# Land tenure challenges in Kisumu City, Kenya

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## ABSTRACT

Rapid urbanization often results in land tenure conflicts commonly in urban fringe areas. Overly, this is attributed to lack or in some instance unclear urban planning schemes. Kisumu city, the third largest city in Kenya has experienced rapid urbanization as a result of high rural-urban human migration in search of informal/informal employment. Consequently Kisumu urban sprawl is highly characterized by gentrification challenges and land tenure disputes in its fringes. The study sought to provide a comprehensive national and local overview of the historical and legal context of land tenure challenges as a result of urbanization in Kenya and Kisumu in particular. The study used document content analysis technique to review records at the lands office and county city planning office. Key informant interview and focus group discussion were conducted on different socio-economic group from the informal settlements of Nyalenda A and B. The study established that land ownership is an emotive issue. There are three types of land tenure namely; public, communal and individual land tenure. Further, the study found that urban population pressure and gentrification remain major challenges in Kisumu urban fringe land which were traditionally communally owned. In the two study areas: Nyalenda 'A' the population density is 8,953 per sq. km while Nyalenda B has a population density of 6,886 per sq. km, far above most residential areas of the city. The demographic growth in Kisumu is exerting pressure on housing development which typically is extending to the surrounding agricultural hinterlands which traditionally were owned by local communities. Consequently, the traditional communal land use practices such as subsistence farming and cattle herding is under threat of gentrification. According to the study respondents, a stylized continuum from: leaseholds to freehold to community land tenure system would be the best model to resolve land tenure challenges and enhance security of tenure in Nyalenda urban fringe. The study therefore recommend stylized model (model based on public participation) but anchored on the UN-HABITAT model (2008) to resolve conflicts over land tenure arising from Kisumu urban sprawl.

**Keywords:** Urbanization, urban sprawl, land tenure, urban fringes, Kisumu, Kenya.

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## INTRODUCTION

Most developing countries have over years recorded unprecedented rapid rates of urbanization. Kisumu city which is the third largest city in Kenya has in the past two decades experienced high rural-urban migration of individuals, households, communities. The influx is conceivably for employment or to benefit from cities perceived role of combining safe and healthy living conditions with better infrastructure and social facilities (Palmer, 2009).

The growth of the Kisumu city's urban population is projected to reach 500,000 people in the 2019 national census from 390,164 people in 2009 (GoK, 2009

census). The growth of the population has caused pressure on demand for more basic services and infrastructure (Anna and Giles, 2016). And recently, the urban population is spilling over to areas beyond the city fringes in search of affordable housing and related amenities. Consequently, Kisumu city is facing haphazard urban sprawl manifested by the growth of informal settlements and declining quality of urban life particularly among the low-income cohorts predominantly in the informal settlement areas of the city. According to Henderson (2010), the city could be classified as a manifestation of "Urban Crisis". In a lot of literature, cities

experiencing urban crisis are characterized by increased competition for access, demand for security of tenure and services (Helle, 2013).

In Kisumu city the rush for land especially in the urban fringes has resulted in land ownership malpractices causing land tenure disputes and insecurity, which mostly is attributed to lack or not so well defined land regulatory institutions for land dispute and conflict resolution (Palmer, 2009). According to Nguru (2010), lack or existence of not so well defined land regulatory institutions is the cause of unplanned and informal urban settlements such as Nyalenda, Obunga and Bandani slums among others in Kisumu city. Land use, access and tenure-ship challenges in Kisumu, is a consequence of poor governance hence the recent establishment of the city board of Kisumu to look into land issues among others.

The Kisumu city board is established by the county government of Kisumu and has the legal or constitutional mandate to enhance land tenure, land rights and land security within the city. However, there are unique as well as general historical and legal challenges important to consider for better governance of land (Martin, 1999) in Kisumu city. The aim of this article therefore is to provide a comprehensive overview of the historical and legal contexts at national and local levels that would enhance land tenure security, in Kisumu City.

## METHODOLOGY

The study used content analysis, key informant interview and focus group discussion to gather contextual information on land tenure challenges. Content analysis of land records at the lands office and county city planning office generated adequate secondary information as is reported in the study. One of the difficulties faced in assessing land tenure systems in Kisumu city is lack of clear records on title status. The lack of detailed and up-to-date land records acts as a major impediment to the assessment of existing tenure systems. Consequently, the study used key informant interviews of relevant land and administrative government officials alongside focus group discussions with different socio-economic groups from two study areas (Nyalenda A and B) within the greater Nyalenda informal settlement which generated relevant primary data to verify facts as herein reported. Clearly, the establishment of the land records with details of ownership is pre-condition to improve understanding of Kisumu urban land tenure systems and for formulation of appropriate policies to improve Kisumu city urban land governance.

## CONSTITUTIONAL FRAMEWORK OF LAND TENURE IN KENYA

In the new constitution of Kenya 2010, land rights and land related issues such as land ownership, access to

land and land use are given prominence. The constitution of Kenya upholds that:

*Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles—*

- (a) equitable access to land;
- (b) security of land rights;
- (c) sustainable and productive management of land resources;
- (d) transparent and cost effective administration of land;
- (e) sound conservation and protection of ecologically sensitive areas;
- (f) elimination of gender discrimination in law, customs and practices related to land and property in land; and
- (g) encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution.

There are three land tenure systems namely; public, community and private ownership (Figure 1).

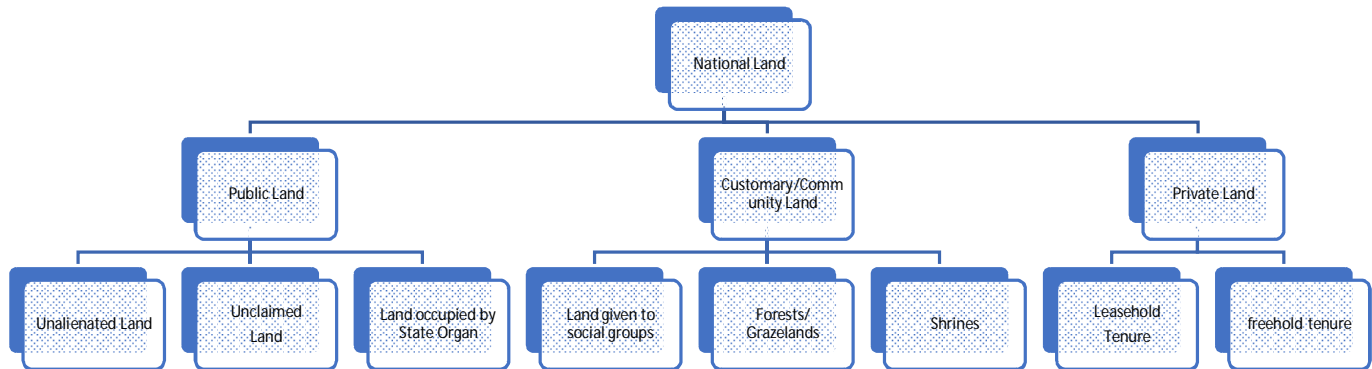
At the national level, government of Kenya is the de-jure custodian of land vested by the people of Kenya collectively as a nation, as communities and as individuals. However, regionally and locally land tenure regimes differ across rural to urban areas (Naab, 2013), often moving from customary tenure in more remote rural areas to more individualized/modern forms of tenure in urban areas.

### Public land tenure in Kenya

According to the new constitution of Kenya 2010, public land is any land which at the effective date was unalienated government land i.e., land which no individual or community ownership can be established, any land not classified as private or community land in the new constitution and or land lawfully held, used or occupied by any State organ. The government of Kenya is therefore the custodian of all public land. Government of Kenya (GOK) land in turn comprises of two categories i.e. unalienated (land not ceded away by the government) and alienated Government land (land leased to private individuals or body corporate). In summary and according to the new constitution of Kenya 2010, public land is all that land which is vested in the public or held by the state (state land). It is all the land in which every Kenyan has an interest by virtue of being a citizen of Kenya.

### Community land tenure in Kenya

According to the country's new constitution 2010, community land also referred to as customary land amongst some communities, is land that its tenure is



**Figure 1.** Land tenure continuum in Kenya.

described in the following three circumstances: one, land held by local communities identified on the basis of ethnicity, culture and or a community with similar or common interest over use of such land. Two, land held by registered associations/ groupings with legal recognition under the laws of the country and lastly, land that is managed or used by specific communities as community forests, grazing areas such as parcels of land traditionally occupied by hunter-gatherer communities such as Maasai and Turkana among others.

Conceptualization of Community/Customary land in Kenya is anchored on the premise that land is much more than the physical soil but the sub-strum to define a people in the context of their cultures, beliefs and practices. As such, traditional philosophy ascribed a sacred significance to land. The Land Commission of Inquiry into the land Law System of Kenya in its 2002 report stated”

*“For indigenous Kenyans, land also has an important spiritual value. For land is not merely a factor of production. It is first and foremost, the medium which defines and binds together social and spiritual relations within and across generations”.*

In Nyalenda informal settlement, land tenure is widely varied. In some sections of the informal settlement, study respondents observed that customary land tenure system in in Nyalenda owe its legitimacy to clans who lived in the region before the advent of the colonial rule. The clans largely practiced herding, fishing and settled farming on customary lands. The economic and social transformation of the clans in Nyalenda is attributed to Kisumu urban sprawl which has had significant influence on sub division of customary lands into private tenure Systems.

Community land sub-divisions into private tenure in Nyalenda have caused disputes amongst the clans largely holding onto their cultures and traditional practices. Consequently land tenure conflicts, disputes

and debates in Nyalenda informal settlement always revolve around the structure and dynamics of lineages and cultural communities rather than on strict jurisdictional principles and precepts of land administration. Currently the major argument by Kisumu city lands board against customary tenure is that it tends to tie up pieces land in many hands (communal) hence serving as an obstacle towards attainment of a free land market (willing buyer-willing seller land market).

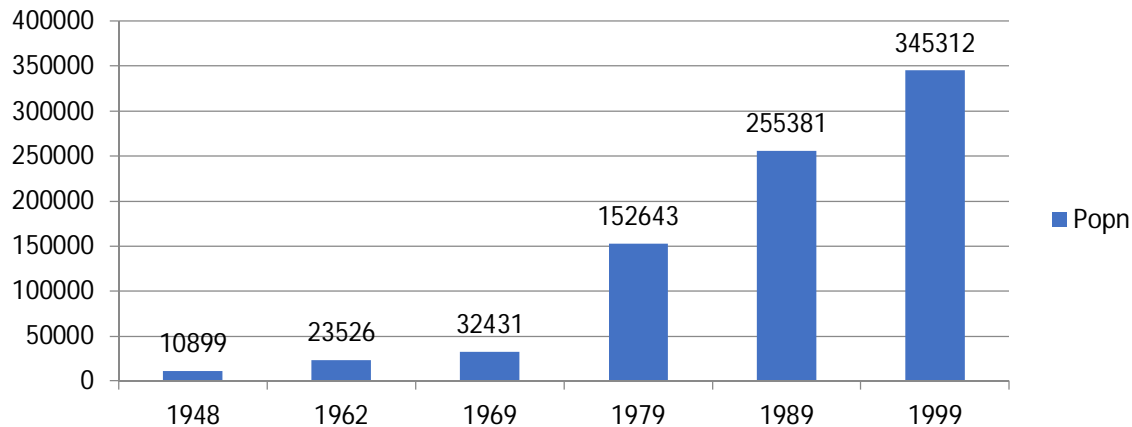
### Private land tenure in Kenya

Private land as classified (Figure 1) and referred to in the new constitution, consists of registered land held by any person under freehold tenure or land held by any person under leasehold tenure. Private tenure is espoused to lead to the release of communal land into free land market. In essence private land tenure system opens avenues to allocate land to the most productive use and specially to solve the urban crises of housing and settlement. The tenure system also allow for land to acquire a collateral feature and be offered as security to obtain credit. Today private land tenure this system in Kenya, forms the basis of land policy reforms to propagate ideals of agricultural production and commercial infrastructural development.

This study established that since the promulgation of the new constitution in 2010, the constitution which led to establishment of the National Land Commission (NLC), with legal mandate to advise the national government and county governments on land issues, a number of challenges have been designate as unique to specific areas. Hence the importance to understand the contextual challenges on land tenure in Kisumu city.

### CONTEXT OF LAND TENURE CHALLENGES IN KISUMU CITY

Kisumu is the third largest city in Kenya, after Nairobi and



**Figure 2.** Human population growth of Kisumu City 1948,1962,1969,1989 and 1999. Source: (KNBS, 2010).

Mombasa. It is the principal town in the region, being the seat of Kisumu County government and former Nyanza province. Presently, it has an estimated population of nearly 500,000 people with an estimated growth of 2.8% making it one of the fastest growing cities Kenya. The trend of population growth since 1948 is illustrated in Figure 2.

Kisumu boundaries have hugely largely expanded because of high population growth urban sprawl into urban fringe characterised by rapidly expanding informal settlement (Figure 3).

The city occupies an area of 297 square kilometers (sq. km) and has an overall population density of about 1,392 people per sq. km. However, the population densities in the different sub-locations vary considerably (Maoulidi, 2012). For example, in the two study areas: Nyalenda 'A' has a population density of 8,953 per sq. km while Nyalenda B has population density of 6,886 per sq. km. The demographic pressure in Kisumu is forcing expansion of urban areas into agricultural hinterlands and thereto the traditional customary land practices to adapt and adjust to new situations (Okonyo, 2008).

Since 1971 Kisumu city boundaries have been extended towards Kisumu urban fringe areas such as: Nyalenda A, Nyalenda B, Manyatta, Bandani and Obunga, Nyamasaria which are largely informal settlement as depicted in Figure 3. This development has had a tremendous effect on the demographics of Kisumu as the majority of residents, 60% of the population are housed in the mentioned peri-urban and extended settlements with dense population and high poverty levels.

The peri urban area houses 60% of the total population, with densities of 150 single rooms per hectare. About 75% of the population, in the peri urban lives in temporary and semi-permanent structures. The study observed that rapid growth and lack of well-coordinated urban development strategy and policy have resulted in huge infrastructure deficit and lack of adequate basic services (water, electricity, health care

and schools) in Kisumu city.

This rapid growth has put a lot of population pressures on land tenure systems in Kisumu city. Parcels of land have been sub-divided into smaller and smaller pieces. Communities have been pushed to subdivide areas originally preserved as communal land for grazing or cultural values including burial sites.

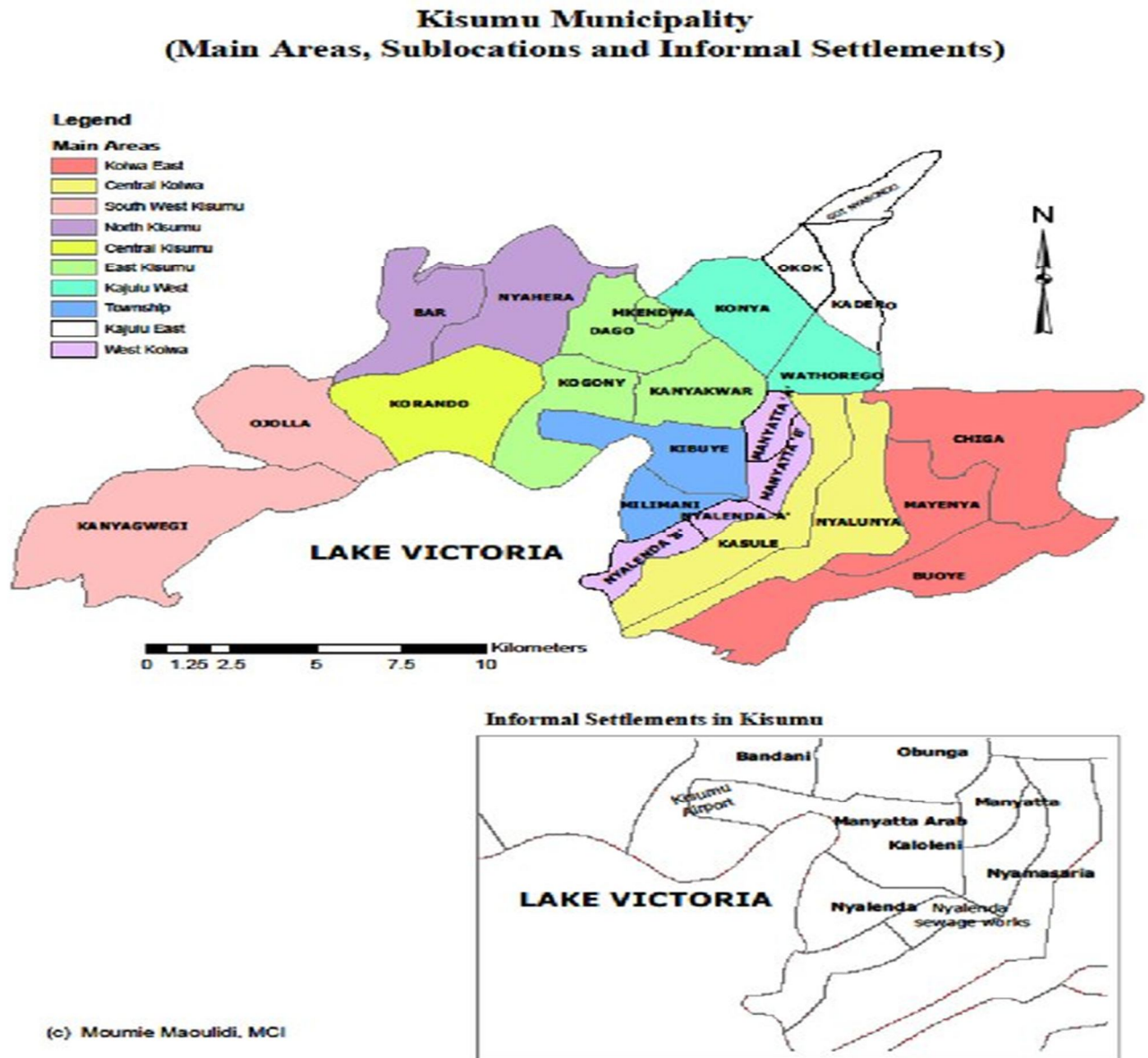
The study established through a report recently tabled (Daily Nation, May 16 2019) before the county's cabinet, a report which noted strongly that;

*"It would have been easier for Kenya's third city to meet the housing demands were it not for land tenure challenges. Court cases, violent attacks and killings have characterized the scramble for land as clans, communities, individuals and institutions challenge ownership of various parcels in Kisumu city".*

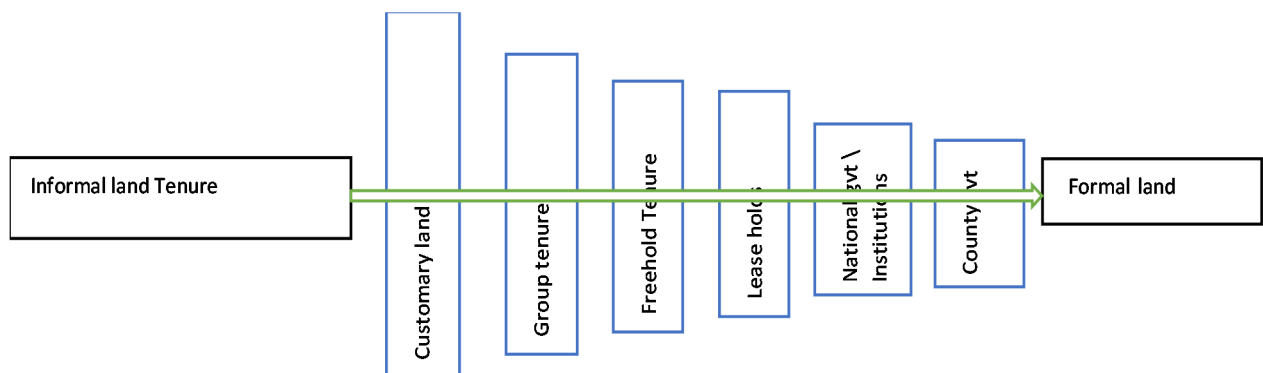
County governor unveiled an ambitious affordable housing plan for over 10,000 units and redevelopment of old council houses and slums in 2019. The Kisumu county governor faulted land tenure challenges as a hindrance to efforts by the regional government to get into partnerships that could help solve the housing crisis (<https://www.nation.co.ke/lifestyle/dn2/The-top-impediment-to-Kisumu-housing-growth/957860-5116628-8ocpgoz/index.html>).

According to UN-HABITAT (2008), co-exist. However, the organization is cognizant of community land tenure customary systems which mostly are under strain due to three main factors: demographic pressure; land scarcity and growing urbanization.

In focused group discussions conducted, participants ascribed to a mix of public, communal and private land tenure system as the best to cater for different interest of the Nyalenda residents as well as county government on land tenure and thereby mitigate the Kisumu Urban sprawl. An illustration of the people's desired continuum of land tenure is shown in Figure 4.



**Figure 3.** Kisumu city and the informal settlement into urban fringe areas. Source: Conference: MCI social sector working paper series No. 12/2010, The Earth Institute, Columbia University.



**Figure 4.** Land tenure continuum in Kisumu/Adapted from UN-HABITAT (2008).

## Dichotomy of land tenure systems and characteristics in Kisumu City

A survey of land ownership/tenureship in Kisumu is briefly described in Table 1.

According to key informant interviews conducted, there is an upsurge of demand for land to cater for housing

which has resulted into booming land agency business (formal and informal) in Nyalenda informal settlement. Consequently, legal and illegal annexation of parcels of land designated as community, public and wetland areas of Lake Victoria. Also, illegal sub division of community land(s) have caused court cases between community members and rampant grabbing of public lands.

**Table 1.** Dichotomy of existing land ownership types, characteristics, advantages and limitations in Kisumu City, 2019.

Tenure system	Characteristics	Advantages	Limitations
Unclaimed land	Mostly in areas where communities were displaced due to floods along the lake shores many years ago. The communities were resettled in the sugar belt schemes	The areas are vast and with high potential for institutional investment.	Are subjects of disputes between the government and new generations of the resettled communities
Customary land	Ownership vested in family, community, group or tribe. Land is managed by leaders on behalf of community. A variation is religious tenure.	Wide acceptance and practice in certain parts of the world. Simple to administer. Social cohesion maintained.	Under pressure from rising land values and commercialization of land. Accountability of traditional authorities may be weak.
Group owned lands	Ownership vested in cooperative or corporate body of which residents are co-owners.	Good security; maintains group cohesion; advantages for group repayment of housing loans.	Legal framework required; restrictions may reduce incentive to invest; double registration required – land and association. The corporate bodies may suffer from weak management.
Freehold tenure	Ownership in perpetuity.	High security; freedom to use, dispose, inherit; use as collateral for loan; maximizes commercial value and enables holder to capture value increases.	Expensive to access. Requires high technical standards, strong Government capacity to administer, clear incentives to register transactions. Risk of gentrification if applied piecemeal.
Leaseholds tenure	Ownership of a leasehold estate for a specified period (sometimes up to 999 years). The landowner has to create the leasehold estate and transfer it to the leaseholder.	Almost as secure as freehold, however, time bound. The leaseholder can sell the lease, and the remaining years on the lease will be transferred to the new leaseholder.	Requires legal framework and costs of access generally high.
National govt lands	Two options (i) Public: occupation of state-owned land or house; (ii) Private.	Both have good security, however, a legally enforceable contract is more important for Private rental. Mobility depends on supply, which is often better in private.	Public rental can be limited in supply and poorly located. Private rental may be open to abuse. Both have maintenance issues. Private rental is dependent on the lessor having freehold ownership.
County govt land	Two options (i) Public: occupation of state-owned land or house; (ii) Private.	Both have good security, however, a legally enforceable contract is more important for private rental. Mobility depends on supply, which is often better in private.	Public rental can be limited in supply and poorly located. Private rental may be open to abuse. Both have maintenance issues. Private rental is dependent on the lessor having freehold ownership.

Source: (Olima, 1998).



According to this study, combination of gentrification and change in land tenure systems due to Kisumu urban sprawl has led to land degradation leading to run off flooding, siltation of sewer system and flash floods frequently occurring on the mouths of inlet rivers such as Nyamasaria. These challenges of urbanization and land tenure issues have imposed serious economic, environmental and social challenges in not limited to the following in Kisumu city.

1. Kisumu has the highest average urban poverty levels and the worst set of health indicators in the country at 48% against a national average of 29%.
2. Kisumu is a net food importer and registers one of the highest incidences of food poverty with 53.4% of its population living below the food Poverty line as compared to Nairobi 8.4%, Mombasa 38.6% and Nakuru 30%.

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