

A Critical Examination of the Legal Challenges Facing the Implementation of the Unit Titles Act in Tanzania

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Abstract: This study critically examines the legal and institutional challenges impeding the effective implementation of the Unit Titles Act (UTA) in Tanzania. Enacted in 2008, the UTA was intended to modernize property ownership by enabling separate ownership of individual units within multi-unit developments, while ensuring collective management of common property. However, despite its potential to support urban development and structured property management, its application has been undermined by legal complexities, institutional inefficiencies, and regulatory gaps. Key challenges identified include cumbersome acquisition procedures, conflicting mandates among regulatory authorities, lack of efficient dispute resolution mechanisms, and financial burdens arising from multiple taxes and mortgage financing conditions such as buy-back clauses. The study further highlights the limited public awareness of the Act, the absence of comprehensive regulations for transforming existing buildings into unit title properties, and restrictions on foreign developers' land rights, all of which hinder market growth and accessibility. These challenges not only discourage investment but also undermine affordability and trust in the real estate sector. The paper concludes that harmonization of the UTA with related statutes such as the Land Act and Land Registration Act, coupled with streamlined procedures, regulatory reforms, institutional strengthening, and enhanced public awareness, are essential for realizing the objectives of the Act and promoting sustainable urban housing development in Tanzania.

Keywords: *Unit Titles, Property Law, Legal Challenges, Real Estate Development.*

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I. INTRODUCTION

➤ Background

As urbanization continues to rise globally, understanding unit titles becomes increasingly important for both legal practitioners and property owners (Johnson & Boipuso, 2018). Unit titles represent a significant aspect of property law, particularly in the context of multi-unit developments such as condominiums and apartment complexes (Johnson & Boipuso 2018). This legal framework allows individual ownership of specific units while sharing ownership of common areas, fostering a balanced relationship between private and communal interests (Massawe, 2020). The concept of unit titles not only facilitates urban development but also provides a structured approach to property management, ensuring that the rights and responsibilities of unit owners are clearly defined.

Unit title refers to a type of property ownership where an individual owns a specific portion of a building for personal use. With Tanzania's growing population and rapid urban development, there is an increasing demand for modern

residential structures that can accommodate more people in one location while supporting efficient city planning (Moyo, 2017). In unit title developments, individual owners have exclusive ownership of their units but share ownership of common areas. These shared spaces include verandas, balconies, land, gardens, parks, hallways, stairways, elevators, basements, parking areas, and storage spaces. Common ownership also extends to essential systems and structures such as central heating, air conditioning, piping, wiring, and walls that divide private units from shared spaces (Mwamlangala, 2020).

In Tanzania, shared ownership of property, such as unit titles, necessitates the establishment of clear rules and regulations. The key legislation governing unit ownership includes the Unit Titles Act, No. 16 of 2008; the Unit Titles Regulation GN No. 357 of 2009; the Mortgage Financing (Special Provisions) Act, 2008; and the Land Registration Act, Cap. 334. The Unit Titles Act enables the separate ownership of three-dimensional spaces, such as apartments or offices, while facilitating shared ownership of common facilities like driveways and lifts. It outlines the rules for unit

owners to manage their joint responsibilities and governs the overall ownership framework of such properties.

The Unit Titles Act (Act No. 16 of 2008) is a pivotal piece of legislation in Tanzania that governs the ownership and management of unit title developments, such as apartments and condominiums. This Act was enacted to address the increasing demand for modern residential structures in urban areas, facilitating the rise of multi-unit properties while ensuring effective management and ownership rights (Tarimo, 2017). The primary objective of the Unit Titles Act is to provide a legal framework that allows for separate ownership of individual units within a building, while also establishing shared ownership of common property areas, such as gardens, hallways, and recreational facilities. Under Section 4(3) of the Act, developers are mandated to register a Unit Plan that includes detailed drawings of the units and common property boundaries, thereby ensuring clarity in ownership rights and responsibilities.

Unit owners under the Unit Titles Act enjoy specific rights and responsibilities that are essential for the smooth operation of communal living (Pedersen, 2010). Each unit owner possesses a principal unit, which can be an apartment or office space, along with an accessory unit that is typically used in conjunction with the principal unit. Common property, which includes shared facilities like stairways and elevators, is held collectively by all unit owners as co-owners. This arrangement necessitates the formation of an Association—a body corporate responsible for managing common property and ensuring compliance with the regulations set forth in the Act. The Association has perpetual succession and can sue or be sued, highlighting its critical role in maintaining order within unit title developments. Furthermore, unit owners are required to contribute to maintenance costs for common areas, reinforcing their shared responsibilities.

➤ *Procedure for Developing Unit Title Properties*

The Unit Titles Act and its accompanying regulations outline the steps for developing unit title properties, as detailed in sections 14 and 15 of the Act and Regulation 9 of the Unit Title Regulations (2009). Although these steps are clear, the development process begins with obtaining a valid land title under the Land Act. This requires the developer to purchase or apply for a right of occupancy under the Land Act and consult with experts such as estate agents, land surveyors, valuers, lawyers, and planners for initial guidance on the proposed project (Biddulph, 2018).

The Unit Titles Act mandates that the developer's unit plan must meet specific requirements and be submitted to the Registrar of Titles for approval and registration. The Registrar must verify compliance with the Act, ensuring the plan is labeled as a unit plan and accurately delineates the external boundaries of the common property, the building's location, and the boundaries of each unit. The plan must include a drawing with numbered or symbolized units, the approximate floor area of each unit, and a schedule specifying each unit's proportionate share in the common property,

expressed in whole numbers (Daniel, 2023). Additionally, it must identify the title of the common property and include the necessary certificates as outlined in section 16 of the Act.

According to section 16, the application for registration must be accompanied by certificates from various experts. These include a land surveyor's certificate confirming the structure's alignment with the external boundaries, or, if there are projections beyond those boundaries, proof of an appropriate easement. A certificate from the local government authority is also required, indicating that the division of the structure complies with regulations on land use and building construction. Furthermore, a registered architect must certify that the unit plan matches the existing structure. These certificates must adhere to the prescribed format under schedule 10 of the Regulations and be submitted along with the required fees.

For residential units, the plan must additionally show the demarcation of leased areas as per section 9(3) of the Act. Developers must ensure the unit plan is signed by the proprietor or developer and includes a valid address. Any other requirements specified by law or regulations must also be fulfilled. The process necessitates hiring certified experts to provide advice on construction planning and regulatory compliance, which involves significant time and costs. The need to engage multiple offices for the required certificates can lead to delays, potentially discouraging stakeholders such as financiers, buyers, and tenants. Therefore, developers should allocate sufficient time and financial resources to address these requirements effectively.

➤ *Legal Challenges*

The smooth operation of the unit title market in Tanzania has been impeded by significant legal and institutional challenges. Despite the enactment of the Unit Titles Act (UTA), which was intended to streamline the processes and regulations surrounding unit titles, numerous obstacles continue to hinder its effectiveness. These challenges primarily affect developers, financiers, buyers, and other stakeholders involved in property development. This analysis critically examines the legal and institutional issues, offering examples and explanations to shed light on their implications.

One major legal challenge lies in the complexity and inefficiency of the unit title acquisition process. The procedures required to obtain unit titles are not only cumbersome but also time-consuming, which discourages participation from developers and buyers. For instance, obtaining approvals for change of land use from the Commissioner for Land or planning authorities involves multiple layers of bureaucracy, often plagued by delays. Such inefficiencies significantly stifle the growth of the unit titles market, as developers face prolonged timelines for completing projects, and buyers endure uncertainty in securing their investments (Pedersen, 2010).

➤ *Institutional Challenges*

Institutionally, the interplay among various actors in the unit title market has been far from seamless. Developing unit

title properties requires coordination among developers, financiers, architects, surveyors, engineers, and legal professionals. However, the lack of a clear framework for collaboration among these stakeholders has led to delays and inefficiencies. For example, consultations with town planning authorities and local governments are often marked by conflicting jurisdictional mandates, which further complicate the approval process. Such institutional disarray has not only slowed project implementation but also discouraged investment in the real estate sector (Tarimo, 2017).

The absence of an efficient dispute resolution mechanism compounds these challenges. Disputes often arise between developers and buyers over delayed title issuance or non-compliance with agreed standards (Omidire, 2023). Without a robust legal framework to address such conflicts swiftly, trust in the system diminishes. Additionally, the high costs associated with compliance, such as obtaining endorsements for changes in land use or adhering to complex regulatory requirements, place a financial burden on stakeholders (Moyo, 2017). For instance, developers might need to hire multiple professionals to meet compliance standards, escalating project costs and reducing profitability. This further discourages participation in the unit title market, perpetuating a cycle of stagnation (Daniel, 2023).

The cost implications of developing, selling, or purchasing units present a significant legal and economic challenge in the unit title market. Both developers and buyers frequently rely on financial institutions for mortgage financing, yet the stringent lending conditions imposed by banks exacerbate the situation. A notable condition is the incorporation of a buy-back clause in mortgage agreements, which obligates developers to repurchase units in cases where buyers default on their mortgages. While intended to mitigate the financial risks borne by banks, this provision imposes an onerous burden on developers, compelling them to factor such contingencies into their pricing strategies (Massawe, 2020). Consequently, developers often set higher unit prices to cushion against potential buy-back liabilities, which inadvertently diminishes the affordability of such properties and deters potential buyers, thereby stifling the growth and accessibility of the unit title market.

The practice of including a buy-back clause, though increasingly prevalent, lacks a formal legal basis, highlighting a regulatory gap that necessitates intervention. The absence of clear statutory provisions governing this practice has created uncertainty for all parties involved. Developers face heightened financial exposure, buyers are subjected to inflated prices, and banks wield significant discretion in imposing conditions (Boshoff & Dlamini, 2017). A legal framework is essential to regulate and standardize this practice, providing equitable guidelines for the inclusion of buy-back clauses and defining the obligations of banks, developers, and buyers. Such a framework would ensure fair market practices, protect stakeholders, and enhance the stability and attractiveness of the unit title market.

The issue of taxation presents a significant legal barrier to the accessibility and affordability of unit title properties. The financial burden arising from multiple taxes, including Capital Gains Tax, Value Added Tax (VAT), and stamp duty, directly impacts both buyers and sellers in the unit title market. These taxes substantially increase the overall cost of property transactions, often deterring potential buyers, particularly those in low-income brackets. This undermines the core objective of the Unit Titles Act (UTA), which is to facilitate access to decent housing for a broader demographic. The cascading effect of these taxes escalates property prices, making it nearly impossible for low-end consumers to afford units, thereby promoting informal and unregulated housing markets contrary to the Act's intent (Johnson, 2018).

In light of this, there is a pressing need to revisit the legal framework governing property-related taxes. A reassessment of VAT and its applicability to unit title transactions is essential to align tax policy with the goal of housing affordability. Reducing or exempting VAT on properties intended for low-income buyers could significantly lower costs and encourage formal property ownership. Similarly, a downward adjustment of the Capital Gains Tax rate could alleviate financial pressure on sellers, which may subsequently reflect in more competitive pricing for buyers (Mwamlangala, 2020). Legal reforms in this area must balance revenue generation for the government with the promotion of equitable access to housing, ensuring that taxation policies do not inadvertently perpetuate housing inequities (Omidire, 2023).

The process of consolidating multiple plots for the development of unit property introduces additional legal complexities, as it necessitates adherence to the procedures outlined in the Land Act. Consolidation typically requires approval from the Commissioner for Lands, consultation with local authorities, and compliance with planning requirements, all of which involve extensive documentation, inspections, and formal endorsements. In urban Tanzania, the process of allocation and issuance of a certificate of title can take about one to two years due to bureaucratic delays (Blandes & Matotola, 2024). Similarly, the government has cautioned survey and planning firms for delaying land formalisation projects, underscoring persistent inefficiencies in the system (Magupa, Matotola, & Alananga, 2023). These delays not only prolong project timelines but also escalate costs for developers, who must cover holding costs, professional fees, and potential penalties. Such procedural burdens underline the intricate interdependence between the Unit Titles Act, the Land Act, and the Land Registration Act, as the legal framework for property ownership and management remains heavily reliant on these statutes (Mghase, 2024).

For legal practitioners involved in the process, such as conveyancers and property lawyers, these delays translate into increased professional obligations, thereby raising the costs of legal services. Lawyers are required to navigate complex requirements, from drafting consolidation agreements to securing approvals from multiple authorities, which involve additional time and resources (Kipene & Tonya, 2024). These costs are typically transferred to the

developer or client, further compounding the financial strain on property transactions. Consequently, while the Unit Titles Act aims to modernize property ownership by introducing horizontal and vertical definitions of ownership, its efficacy is undermined by its dependency on the slow and cumbersome frameworks of the Land Act and Land Registration Act (Mbilinyi, Kaswamila, & Assenga, 2023). This systemic inefficiency impacts all stakeholders, highlighting the need for streamlined and harmonized regulatory processes to support the real estate sector effectively (Rubakula, 2024).

The Unit Titles Act (UTA), though enacted and enforced, suffers from gaps in its regulatory framework, particularly concerning the transformation of existing buildings into unit title properties. The absence of comprehensive regulations addressing this transformation has left numerous archetypes of unit title properties outside the scope of the UTA (Mghase, 2024). These properties, though ostensibly similar to unit title properties, lack critical legal attributes such as the establishment of unit owners' associations, which are central to the governance and management of unit title properties (Blandes & Matotola, 2024). Without a legally recognized association, the maintenance and administration of common areas remain unregulated, and individual unit owners are deprived of collective decision-making power, thereby undermining the security and functionality of the unit title system (Magupa, Matotola, & Alananga, 2023).

Furthermore, the failure to integrate such archetypes into the unit title framework exposes subtitle buyers to legal vulnerabilities. Subtitles, while closely associated with unit title properties, do not provide the same legal assurances. For example, a buyer may hold a subtitle for their unit while the overarching main title is retained by another party, often the developer or original owner. This arrangement creates potential risks, as the main titleholder can engage in transactions or agreements that may jeopardize the interests of subtitle holders (Mbilinyi, Kaswamila, & Assenga, 2023). Such a scenario not only diminishes the legal security of subtitle buyers but also erodes trust in the real estate market, highlighting the urgent need for regulatory reforms to bridge these gaps and fully operationalize the intent of the UTA (Kipene & Tonya, 2024).

The implementation of the Unit Titles Act of 2009 has faced significant challenges due to limited public awareness and understanding, even among its implementers. This is attributable to the Act's introduction of a novel property ownership regime, which diverges markedly from traditional land law or real estate practices (Mghase, 2024). Transferring unit title properties entails a more intricate process compared to ordinary property transfers, requiring additional legal and financial considerations (Rubakula, 2024). For instance, prospective buyers must evaluate whether there is adequate insurance coverage for the entire unit title development, supported by recent building valuations. Moreover, buyers must assess the affordability of quarterly or special levies, the existence of unresolved invoices, and any potential liabilities arising from outstanding building works or unpaid

obligations (Blandes & Matotola, 2024). Such complexities necessitate heightened legal literacy among stakeholders to ensure compliance and protect interests effectively (Magupa, Matotola, & Alananga, 2023).

Additionally, comprehensive due diligence is critical in unit title transactions. This includes verifying the status of the land transfer register at the Registrar of Titles to ensure no separate dealings involving common property exist (Mbilinyi, Kaswamila, & Assenga, 2023). Factors such as the adequacy of the sinking fund, the building's age, current state of repair, and the type of construction are essential in evaluating the financial and structural soundness of a unit title property (Rubakula, 2024). Furthermore, stakeholders must scrutinize the administrative and sinking fund account balances and investigate any ongoing or proposed litigation involving the Owners' Association (Blandes & Matotola, 2024). The presence of restrictions on the use of common property or conditions approved by the Owners' Association, such as alterations to the unit, must be meticulously reviewed to understand their implications (Magupa, Matotola, & Alananga, 2023). These intricate requirements emphasize the necessity for specialized legal expertise and a robust framework to address the unique challenges posed by unit title ownership and transactions (Mghase, 2024).

➤ *Legal Complexities in Pre-Completion Sales*

Pre-completion sales pose unique challenges that require buyers to exercise due diligence in securing adequate legal protections. The buyer must ensure that the sales contract incorporates explicit representations and warranties that provide clear remedies in case of breach (Magupa, Matotola, & Alananga, 2023). For example, a buyer relying on mortgage financing must ensure the contract includes conditions precedent, such as the successful approval of the loan, or conditions subsequent, such as the mandatory approval of the transfer by the Commissioner for Lands or the Registrar of Titles (Blandes & Matotola, 2024). Failure to incorporate these provisions exposes the buyer to significant legal risks, including potential loss of investment or protracted disputes over contract performance (Rubakula, 2024).

➤ *Land Rights for Foreign Developers and Buyers*

Sections 19 and 20 of the Land Act set stringent parameters regarding the land rights of non-citizens. According to section 19(2), foreigners may only obtain rights of occupancy, derivative rights, or partial interests in land for investment purposes, provided such investment is approved by the Tanzania Investment Centre (TIC). For example, in joint ventures or partial transfers, foreigners may acquire leases or licenses but are excluded from outright ownership unless their project aligns with TIC-approved investment criteria. The law allows for foreign participation in property development under derivative rights, as demonstrated by AVIC International's project in Kigamboni. However, derivative rights impose limitations on disposition, such as requiring sales to be conducted through the TIC and incorporating specific conditions into sale agreements, thereby restricting market flexibility.

➤ Implications for the Unit Title Market

The limitations of derivative rights create practical and financial barriers within the unit title market. Developers operating under derivative interests can only sell subleases rather than full rights of occupancy, which diminishes the attractiveness of such properties to buyers. This issue is further compounded by concerns from financial institutions that derivative rights do not provide adequate security for mortgages, making unit buyers ineligible for home loans. This situation undermines the marketability and financial feasibility of such developments. It is critical to reevaluate the regulatory framework to ensure that foreign developers can participate effectively while addressing the needs of unit buyers, particularly in securing finance and obtaining clear and marketable titles. Without reforms, these legal restrictions will continue to hinder the growth of the unit title market in Tanzania.

II. CONCLUSION AND RECOMMENDATIONS

The enactment of the Unit Titles Act marked a significant advancement in the real property sector. However, its success relies on a strong legal and institutional framework. To achieve its objectives, laws such as the Land Act and the Registration Act must be harmonized with the Unit Titles Act. Additionally, the Act's goal of promoting efficient development and transfer of unit title properties cannot be realized without a well-coordinated and effective administrative system to enforce it. Strengthening the capacity of land departments within the Registrar of Titles' office and Local Government Authorities is crucial to this effort. Furthermore, limited public awareness undermines the effective implementation of the Act. Therefore, broader public engagement is essential to ensure adequate understanding and compliance. Key stakeholders, including real estate developers, agents, lawyers, financiers, architects, valuers, surveyors, and planners, must be actively involved to facilitate the smooth application of the law.

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