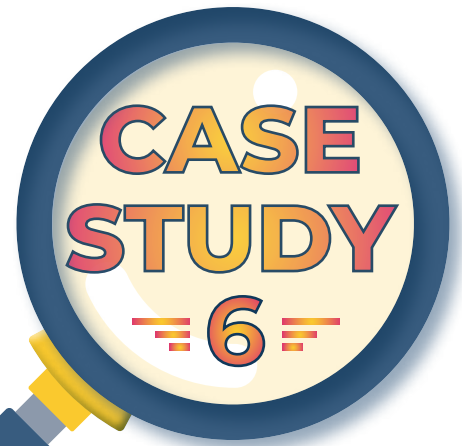


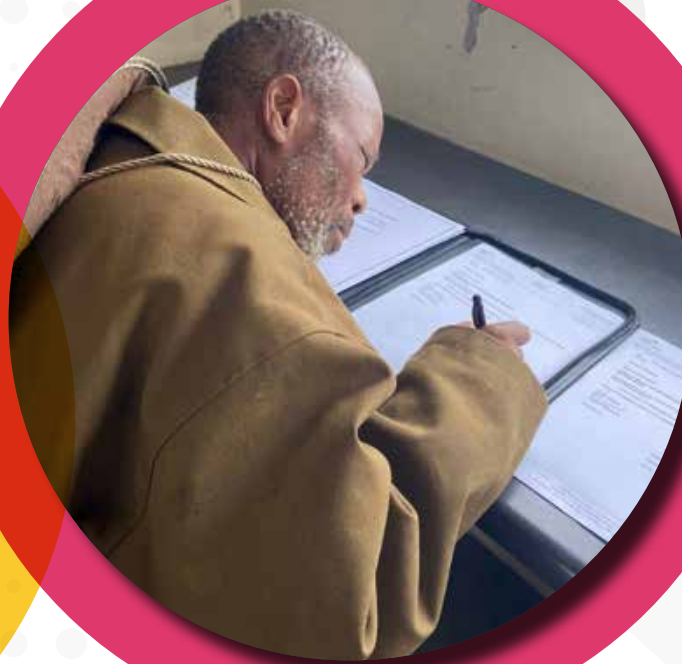


Vuthela

ILEMBE LED PROGRAMME



Title deed issuance in low-income areas - complex problems exposed



A Case Study in the iLembe District of
KwaZulu-Natal, South Africa

May 2023

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Confédération suisse
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KWAZULU-NATAL PROVINCE
ECONOMIC DEVELOPMENT, TOURISM
AND ENVIRONMENTAL AFFAIRS
REPUBLIC OF SOUTH AFRICA



enterprise iLembe
ECONOMIC DEVELOPMENT ADVISOR

Introduction

The World Bank's Doing Business report 2018 for South Africa recognised that the country has a property registration system that is reliable, but rather slow and expensive.

It is primarily used by wealthier citizens and organisations because it is beyond the reach of, in particular, low-income households. It was further estimated that 70% of the population do not use the official systems and that most of the real estate market activity is conducted informally. The loss to the local economy from poorly functioning real estate markets affects property values, the willingness to develop and invest, access to credit and business growth. This in turn significantly reduces the potential income received by the state and local authorities in income taxes, rates collection and other municipal fees and taxes.

This property registration initiative was overseen by the Vuthela iLembe Local Economic Development (LED) Support Programme, which is a five-year programme funded by the Swiss State Secretariat for Economic Affairs (SECO) and partnered by the Department of KZN Department of Economic Development and Tourism, the iLembe District Municipality and the local municipalities of KwaDukuza and Mandeni.

It aims to improve the economic future of iLembe district residents through sustainable economic growth of the local economy and the creation of higher, better and more inclusive employment and income-generating opportunities.

The programme consists of five components:

- **Public Financial Management (PFM)**
- **Municipal Infrastructure (MI)**
- **Private Sector Development (PSD)**
- **Building Inclusive Growth (BIG)**
- **Partnership and Coordination (P&C)**





Left to right: Sizwe Khuzwayo (Mandeni Local Municipality), Fransizka Spörri (SECO), Adamou Labara (International Finance Corporation Country Manager)

For this project, SECO provided funding support to two of the municipalities in the iLembe district through the Vuthela Programme in various municipal management and administration activities. Together with the World Bank Group (WBG), they offered support to address concerns relating to the above issues. A two-pronged approach was agreed to cater for addressing both the high incidence of informal real estate market activity in the district and the low incidence of issuing deeds for the first time:

- Establish a simpler and more affordable system for registering transactions for low-income areas; and
- Undertake a mass systematic registration program in order to issue the first deed to owners.

The WBG appointed GeoAfrika Surveys to undertake this work, and the project was governed by the Project Steering Committee

consisting of representatives from the WBG (chair), both KwaDukuza and Mandeni Local Municipalities, the Department of Human Settlements and Vuthela.

With the project having closed out in September 2022, this case study presents the project's methodology, key findings and recommendations to facilitate the issuance of title deeds to owners, particularly in low-income areas. The study recommendations focus on two areas: the first largely focused on specific interventions that should be addressed by government and other stakeholders, and the second focused on recommended legislation changes. The focus of this case study is on the former recommendations. Those related to legislation will be shared on the Enterprise iLembe website.

The two iLembe property registration pilots

Pilot A

For Pilot A it was agreed that the best way of establishing what the situation in low-income/low property value areas within each municipality was to establish centres that would open for the community in specific areas to come forward and lay claim to their title deeds. Mandeni Local Municipality chose Sundumbili as their Pilot A area and KwaDukuza Local Municipality chose Groutville as theirs.

Much preparation was required before opening these centres. **Critical components to running the centres successfully were: proper community communication and advertising, the location of the centres and office logistics, database and map preparation, form preparation, and the training of staff to adequately deal with the public on land-legal matters.** The goal was to record in detail each case that came forward and open a file with completed forms and accompanying documentation, certified copies where necessary, for each case. A combination of paper-based files and computer-based databases was utilised.

Outcomes in Sundumbili

Sundumbili is a very established and older township which has a total of 3 402 properties. **A total of 350 title deed claimants recorded their claims, meaning an estimated 10% of the community do not have title deeds to their**

property. By far, the majority of these claimants were heir occupiers, where the rightful owner of the property had died intestate. The next highest category, over 20% of the claimants, had purchased their properties through informal sales.

There are standard procedures to be undertaken when rectifying these situations on a case-by-case basis using a conveyancing attorney and the processes are expensive, administratively onerous and time-consuming. The typical costs at time of reporting of attending upon rectifying heirs inheriting a property in this manner could easily total R10 000 or even more.

Interestingly, the question was asked in the questionnaire to each community member regarding whether they were prepared to pay for the work required to issue their title deed. Many said yes, and some of them stated they estimated the cost to be around R5 000. Clearly there is an awareness in some of the community of the process required and associated costs.

The typical costs of attending upon rectifying heirs inheriting a property could easily total R10 000 or even more.



The Sundumbili Pilot A project had a good ending in that funds were secured from the Department of Human Settlements to attend to the cases that came forward through the establishment of the Sundumbili Dispute Resolution Committee within Mandeni Local Municipality. **These claims are now being dealt with on a case-by-case basis** by the committee under the direction of the manager for Human Settlements and Building Control at Mandeni Local Municipality, Ms Nondumiso Khumalo.

Another good outcome was that it was discovered through the claimants that the municipality had been withholding the issuance of title deeds due to non-payment of rates. This practice had been deemed unlawful and with further work by the project team, a total of 150 title deeds were eventually released by Mandeni Local Municipality to property owners. An early success of the project.

Outcomes in Groutville

In Groutville Ward 12 the results were startling. Out of a total of 1 104 properties in Ward 12 a total of 785 claimants came forward to the

community hall help centre over three weeks. **It is estimated that 71% of the properties in the area have residents who do not hold title deeds for the properties that they claim are theirs.** By far the largest category of these claimants, over 50%, claimed to be original subsidy beneficiaries of the eThafeni housing project that was discovered, after some investigation, to have completely stalled years ago with no title deeds issued.

It was noted from the claimants received that the community members, in general, did not understand South Africa's property registration system and the administration of deceased estates. It transpired, through the individual interviews, that some claimants held the view that ownership of the underlying land and the immovable structure(s) thereon could be owned by separate persons.

The Groutville Pilot A project also had a good outcome. After the project team conducted a land audit to investigate and validate the land-legal blockages preventing the eThafeni transfers from occurring, work was undertaken to secure the relevant Power of Attorney over the underlying land for appointed conveyancers

to deal with the cases and transfer title following a detailed beneficiary validation process. There are now 204 title deeds about to be issued, with more to follow.

What was learnt in Pilot A?

While the Pilot A projects did have positive outcomes in terms of the assistance rendered to the community to access their title deeds, it did also highlight some alarming trends. Low value property owners tend not to have wills in place so the passing on of title to heirs often does not happen. Secondly, informal sales are common practice and seem to be even more prevalent in more dynamic areas. Thirdly, as was witnessed in eThafeni as well as in the Pilot B projects, hundreds of thousands of housing project beneficiaries in South Africa didn't receive their title deeds in the first instance usually due to technical issues on the project, which makes the passing on of title either by inheritance or by formal sale simply impossible.

Ignoring the other dynamics impeding the attractiveness of using the formal land registration system to transact low value properties, most notably the high costs

involved, the above factors highlighted by the Pilot A projects paint a bleak picture of formal and correctly registered property ownership in the iLembe district. While the setup of well-capacitated local land offices like the Pilot A centres within local municipalities will definitely assist communities with title deed issues, **the real challenge remains on how to make sales of low value properties quicker and cheaper in order to make it sustainable.** The only solution is to introduce new legislation to do this, a key recommendation of this study.

In exploring funding avenues to assist claimants with conveyancing costs to attend to their cases, the GeoAfrika project team tested the use of B-BBEE socio-economic spend (and associated points) by conveyancing firm HSG Attorneys Inc to assist two claimants in Sundumbili with acquiring their title deeds. **We were pleased to have the spend 100% recognised in the firm's B-BBEE audit at the end of the year, opening up the possibility for private sector, and large law firms in particular, to channel their social responsibility spend to assist qualifying low-income homeowners to acquire title deeds for their properties.** They could also provide pro-bono legal support to local land offices and claim their costs towards their B-BBEE scorecard.



Pilot B

The Pilot B projects were nominated by each local municipality and varied considerably in size and quantum of issues hindering the issuance of title.

A huge amount of time-consuming work ensued on these projects in conjunction with the relevant project implementing agent, the municipality concerned and the KZN Department of Human Settlements where necessary in an attempt to resolve the numerous issues at hand. These included extensive encroachments and uncontrolled building, the requirement of new Spatial Planning and Land Use Management Act (SPLUMA) applications, environmental consent requirements, general plan amendments, beneficiary administration, unregistered servitudes, illegal occupations, etc.

Outcomes for Pilot B

Several common themes are observed across most of the projects that had stalled with respect to issuing title deeds. **Land-legal impediments and/or the non-availability of municipal services certificates for water, roads, stormwater or electricity were the most common major reasons preventing the opening of the township registers.**

Secondly, projects approved under previous legislation and that are now subject to SPLUMA (because the township registers were not opened timeously previously) are quite rightly subjected to a level of scrutiny that unfortunately is at odds with the development that has been allowed to continue on the ground through the passage of time. Illegal structures,

encroachments and building in environmentally sensitive areas, often in conflict with the approved cadastral layout of the township, create all manner of problems when trying to regularise these projects.

Pilot B involved an enormous amount of energy, time, expertise and micro-management that is typically required to get old and hugely problematic housing projects back on track. The story of the Inyoni Housing Project in Mandeni is not unique; it took three full years to successfully get the first batch of title deeds issued in August 2022.

The case of the Nyoni Housing Development

The Inyoni Housing Project in Mandeni Local Municipality is the youngest of all the problematic Pilot B projects that were nominated by Mandeni Local Municipality, having commenced in 2008. The project had suffered several delays in construction so by the end of 2018 a total of only 748 houses had been fully built, with another 2 272 to be completed in the project, making Inyoni a true 'mass-titling' Pilot B project.



The ‘story of Inyoni’ is a classic tale of a housing project where the implementing agent has focused purely on housing construction and services installation while managing cashflow, and neglected land-legal considerations to the detriment of ultimate title deed issuance.

GeoAfrika Surveys commenced intervention/co-ordination work in early 2019 and identified the following immediate issues with the reasons for zero title deeds being issued to date:

- **The major issue impeding the process of opening of the township register related to a road servitude not being able to be registered across portions of land owned by Ithala and the Ingonyama Trust.**
- **There were over 400 missing beneficiaries that were originally allocated housing subsidies that the implementing agent had not been able to locate.**
- **Water, roads and stormwater services were in place, however bridging finance for a major electrical installation was required with an application to be lodged with the Department of Minerals and Energy.**

It is typical when dealing with problematic/stalled housing projects of this nature to encounter new problems once the initially identified obstacles are overcome. However, the quantum and scale of issues that plagued Inyoni from 2019 shows how the combination of a lack of proper land assembly up front in a housing project, combined with poor management of professional service providers by the implementing agent, and exacerbated hugely by the passage of time, can have catastrophic consequences.

Finally, after extensive work in 2022, the opening of the Township Register for Inyoni and 63 simultaneous transfers to beneficiaries were registered in the Pietermaritzburg Deeds Office. By not having done a proper land assembly

up front in Inyoni, there were devastating consequences with respect to wasted time and effort down the line in resolving these issues.

With the township register now open and all land-legal obstacles now removed, the transfers in Inyoni can be simply effected in batches following the proper beneficiary administration processes in place with authorised signatories using legally correct documentation.

A new implementing agent was appointed by Mandeni Local Municipality for Inyoni which in turn appointed a new conveyancer to continue with the conveyancing of the balance of the 2 408 transfers to still be effected in the coming period.

Project recommendations

The recommendations presented in this case study focus on those that require implementation largely by government at all levels.

Land audits and land assembly

In reporting on the Pilot B project blockages, a **consistent theme emerging was that land and development rights audits and land assembly had typically not been done properly at the early stages of housing projects.** While this omission often does not hold up the construction stages of the project, it can have catastrophic consequences when it comes to the title issuance stage of the project where major constraints impeding the opening of the township registers are often discovered.

A major recommendation emanating from this project is that officials at both the municipalities and the Department of Human Settlements are made acutely aware of the need for these audits and what is involved in these processes at a detailed level. It is further recommended that

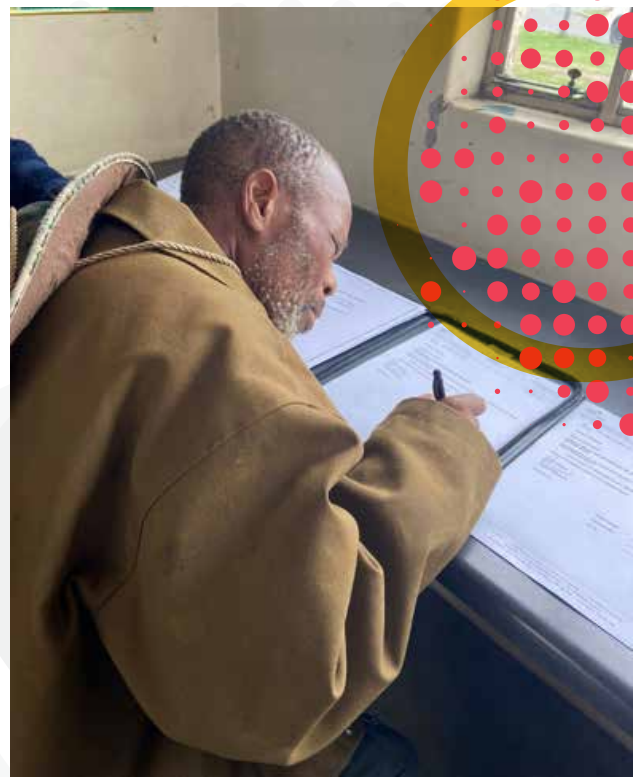
specific training workshops/webinars be run countrywide for this purpose.

As discussions around this recommendation developed within the project team, and collaboration with other projects such as the Khayalitsha Transaction Centre project undertaken by the Centre for Affordable Housing in Africa and 71Point4 evolved, **a toolkit was developed for primary transfers.** This encompasses many aspects of this process, including land and planning regularisation, in pursuit of ensuring both smooth implementation of new housing projects as well as a logical approach to 'blocked' projects. Naturally, current legislation guided these processes however it was recognised that new legislation would be required to address the massive backlog efficiently and economically. The toolkit can be accessed here:

<https://cahf.gitbook.io/primary-transfer-toolkit/v/land-legal-toolkit/>

Department of Human Settlements

The Title Restoration Grant had 'no paid item' for project co-ordination/management and assumed either natural co-ordination between professionals required to carry out complex and inter-related land legal tasks or else co-ordination by the implementing agent originally contracted to undertake the housing project. Simply put, these were bad assumptions. In addressing the substantial title deed backlogs under the Pilot B project, it was discovered that the implementing agent no longer exists in many cases. Where they still do exist, they typically have either little or no financial interest or commitment in the pursuance of the issuance of title deeds on the project since nearly all their income is made/claimed from construction with very little fees attracted by ensuring that the conveyancing is concluded.



Mr Sifunda Amos Nkosi from Sundumbili B

To exacerbate this situation, the quantum of fees allowable by the Title Restoration Grant for conveyancing is extremely low considering the passage of time and large number of complications that have arisen by virtue of this. The Title Restoration Grant conveyancing tariffs assume mass transfer of wall-to-wall properties within correctly surveyed and approved general plans that have little or no underlying land titling issues. It assumes too that the township registers are open in the Deeds Office and that beneficiary administration is all correctly done (under separate fees) with signed sales agreements between the municipality and the validated beneficiary per site. The reality is the opposite. **A huge amount of conveyancing pre-work and a mini-land audit is often required, added to a lot of checking, verifying, querying and rectification needed due to typically poor beneficiary administration work presented.**



Ms Nonhlanhla Msweli on receiving her title deed:
“There is no doubt that I am protected.” See IFC video on YouTube

The fundamental lesson learnt with respect to titling issuance utilising the Title Restoration Grant is that **none of the parties are sufficiently motivated to prioritise this work**. Furthermore, if one major stumbling block is encountered (for example the servitude registration issue in the Inyoni project), the entire process typically grinds to a halt as nobody is prepared to make extraordinary efforts to resolve the major issue or, where these efforts are made, there is no way for the professional responsible to be remunerated for such efforts.

In addition, the expectation for reporting by the municipalities on these projects is high. Municipalities typically expect monthly reports, usually in person, in typically very long human settlement meetings that can last a full day. Again, there is no budget for project management on the Title Restoration Grant and these requirements add to the financial non-viability of doing this title restoration work by the private sector. If the project is genuinely a mass titling project with a high yield and a low number of barriers, the Title Restoration Grant tariffs could be argued as adequate. But usually

this is not the case which is why numerous legacy housing projects countrywide remain unclosed.

The Title Restoration Grant has now been terminated. The need however for project closure and title issuance remains. If a new Title Restoration Grant is launched to address the remaining backlog, it is recommended that the professional tariffs are reviewed and that provision is made for project management to co-ordinate activities at a detailed level. The Pilot B project made use of war rooms to attack the barriers of the project head-on, but someone needs to co-ordinate and host these as well as follow up continually thereafter. Municipalities do not typically have the capacity for this.

Later experience taught the additional lesson that direct appointments by these service providers by Department of Human Settlements or by the municipality is way preferable than by the implementing agent. **Control and performance management of the service providers is critical to successful outcomes, particularly in the case of beneficiary**

administration. That management however necessitates an experienced and knowledgeable employer in that particular field of expertise which was not always the case.

Department of Agriculture, Land Reform and Rural Development

A secure land registration system relies on secure record keeping. South Africa has two spheres of government that are charged with the secure storage and management of property-related records, namely the national sphere and local sphere.

The national sphere, specifically the Department of Agriculture, Land Reform and Rural Development, is responsible for the storage of approved and surveyed property diagrams as well as title deeds, which is implemented through the Office of the Surveyor-General and the Deeds Registries Office in each province.

The municipal sphere, being the local municipality in which a particular land parcel lies, is responsible for the storage of approved plans relating to that property, i.e. land use plan (zoning), building plan, services plan, etc. as well as the administration of rates, taxes and utilities.

While the provincial offices of the Surveyor-General have made great strides in the past two decades with respect to digitising South Africa's cadastral data, the system is far from perfect. None of the digital co-ordinates in the digitised cadastral layer can be relied upon as legally correct. The property survey diagram must always be referred to for the legal co-ordinates of the property beacons.

A long-acknowledged weakness of the digital land record system in South Africa is the fact that the digital ownership record database and the spatial cadastral database are two totally separate systems. Much work has been done in storing the unique land parcel code (commonly termed the SG 21-digit code) in the Deeds

database, and a registration flag (i.e. registered or not registered indicator) in the cadastral database. However, South Africa is still many years away from being able to instantly view the registered property layer of the country.

The consequence of the above is that despite being technically very achievable, the process of digital lodgement of property transfers (conveyancing) as well as the process of lodgement of digital cadastral records in a spatial data format (surveyed land parcels) is not available. This points to the technological reform required within the Department of Rural Development and Land Reform, specifically within the Deeds Office and the Office of the Surveyor-General. Without this a cheaper, more accessible and integrated system of record of land will not be achievable.

Given the historical reluctance of the Deeds Office to transform technologically as well as change its way of doing things generally, it is recommended that this matter be addressed at the highest level. There has to be recognition of the problem of the absence of an affordable and highly accessible land registration system in the country in order for the responsible authorities to respond.

A second recommendation is made with respect to the use of the Land Titles Adjustment Act (111 of 1993) as well as the Distribution and Transfer of Certain State Land Act (119 of 1993). It was envisaged through the iLembe project that the Land Titles Adjustment Act would be made good use of. It is a powerful piece of legislation used to regulate the allocation of certain land in respect of which one or more persons claim ownership, but do not have registered title deed(s) in respect thereof. The Act is administered by the Minister of the Department of Agriculture, Land Reform and Rural Development who designates land and appoints a Commissioner after a process that is so protracted and unwieldy that

it is practically unworkable.

While use of the Land Titles Adjustment Act was not made in the iLembe project for those reasons (protracted time frames was the opposite of what was required), a specific recommendation is made in order to effectively utilise this Act. This is the route that the project team would have followed if time had permitted which required a) budget to have been timeously allocated by the Department of Agriculture, Land Reform and Rural Development for this purpose and b) making use of an approved panel of Commissioners.

The recommendation therefore is that municipalities should conclude such Implementation Protocols with the Department of Agriculture, Land Reform and Rural Development and prepare 'Work Plans' as defined and contemplated by the Intergovernmental Relations Framework Act (13 of 2005) when making use of the Land Titles Adjustment Act for title rectification. The conclusion of Implementation Protocols has had a material and positive impact on addressing the issue of state departments and the different spheres of government operating in 'silos'. The Act is a powerful tool; it just needs all parties to collaborate efficiently in a co-ordinated manner in order to be utilised to its full potential.

Department of Justice

The Department of Justice is responsible for the running and administration of the Office of the Master of the High Court. This office deals with, amongst other things, the reporting, administration and finalisation of deceased estates. The involvement of the Master of the High Court in finalising housing projects and, more specifically, the registration of transfer and issuance of title, cannot be understated – it is vital.

As time passes by due to blockages of housing

projects, as alluded to above, many approved beneficiaries pass away. The formal and legal process to be followed is that the subsidy should not fall away but rather that the house so allocated should be transferred to the heir and/or surviving spouse of the deceased beneficiary. However, this can only take place if the deceased estate in question is formally reported to the applicable Master of the High Court and an executor or Master's Representative appointed. Only at that point can the said estate representative take steps to receive the house in question. If this formal and legal reporting of the deceased estate is not followed, the estate of the deceased is frozen, thereby freezing the ability to finalise the site in question, unless the site is re-allocated which requires a cumbersome and time-consuming process to be followed.

The unfortunate reality is that the relevant offices that make up the Master of the High Court are very far away from the areas in which the beneficiaries, or heirs of the beneficiaries, reside. This means that **beneficiaries are required to spend large amounts of money on travel just to get to an appropriate Master's Office.** Once there, the process of reporting the estate is not straightforward, and many beneficiaries/heirs do not understand the said process or plethora of paperwork that is required to be completed by the heirs and submitted. The Master's Office is also notorious for not being willing to assist in this respect. If the heirs can navigate these hurdles, it is then very well known that the Master's Office can take months, if not longer, to either raise queries on the documents or to simply issue the required paperwork that confirms the appointment of the applicable estate representative.

The combination of the abovementioned factors is that most beneficiaries/heirs do not take the appropriate steps to report deceased estates to the Master's Office. Others simply do not know that this legal requirement even exists. This only



exacerbates the delays in trying to issue title deeds or complete projects. Again, as mentioned above, there are little to no financial incentives in existence within the Title Restoration Grant available to project teams/professionals that would lead to these issues either being finalised quicker or at all.

In addition to the above, the inability to follow the above process, whether knowingly or unknowingly, is then leading to informal sales and transactions – meaning the transfer of properties is taking place outside of the parameters of the legal registration system and therefore unregulated and unreported. This in itself leads to substantial issues, as the more generations that this affects, the more difficult it is to correct. This can, and often is, fatal to a project.

The above issues are some of the easier matters to address, as these issues can be resolved through the following:

- a) Department of Justice (more specifically, the Master's Office) to conduct regular countrywide education sessions within local municipalities.
- b) Master's Office to set up satellite offices within local or district municipalities to receive deceased estate paperwork from heirs within the area of the municipality in question, to raise queries with heirs on paperwork already submitted, to provide assistance to heirs on completion of applicable paperwork, or to provide heirs with the finalised paperwork appointing the relevant estate representative. This way the Master's Office would make it easy and affordable for heirs to attend on the Master's Office.
- c) Master's Offices to link up with local law firms or legal aid clinics to assist with the rollout of the above.



Department of Co-operative Governance and Traditional Affairs

Bearing in mind the above as well as the overwhelming need of owners of low-cost properties to access inexpensive land transaction services, **it is a major recommendation of this case study that local land offices be established.** It is proposed that initially only one office per district municipality, that is centred at the largest local municipality within that district, is established in conjunction with the Department of Co-operative Governance and Traditional Affairs as well as the various other national departments that would be critical to the success of operating such an office.

The services these offices would offer, in conjunction with the local municipalities, Deeds Office, Surveyor-General's Office, Master's Office, and other possible stakeholders will need careful consideration regarding resourcing and funding. Local surveyors, conveyancers and beneficiary administrators would be key expertise requirements at these centres. The use of technology will be key in effectively offering an affordable and efficient service within the



Whether I or my husband pass away, my children will remain in the home...

Ms Gretta Nkosi on receiving her title deed: “Whether I or my husband pass away, my children will remain in the home... even my grandchildren will have a home.” See IFC video on YouTube

constraints of current legislation and existing methods. However, the setup of the first office, possibly a pilot, must challenge every aspect of current inefficiency and expense in the existing process of property transfer on a low-cost property from the sale agreement to the issuance of a rates clearance certificate by the municipality to the conveyancing to the transfer.

This recommendation will require a project on its own to craft an implementable model. This case study though has shown that the turnout en masse of people in Pilot A clearly demonstrates the need on the ground. And the extent of problems at land parcel level in Pilot B reinforces this.

The Department of Co-operative Governance and Traditional Affairs held a Provincial Land Governance Summit (15-16 March 2022) that promoted this concept but concluded that this proposition will require further extensive consultation with numerous stakeholders and government institutions. When the implementation plans of the local offices are considered, it is further recommended that consideration must also be given to concluding an Implementation Protocol in terms of Section 35 of the Intergovernmental Relations

Framework Act. This will then facilitate the conclusion of Service Level Agreements between the relevant organs of state and the district and local municipalities. The Implementation Protocol, via the high level Intergovernment Forum (that must be established and where representation is by officials with the necessary delegations), may seek ‘political’ interventions.

Funding of these offices and their financial sustainability will be a major consideration.

One recommendation made in this regard, as a direct and proven outcome of the iLembe Titling Project, is that maximum utilisation of B-BBEE socio-economic spend by private sector is investigated fully. The category of beneficiary and their typical socio-economic profile makes them ideal candidates to qualify fully for the use of the B-BBEE funding for purposes of property transfer costs with 100% of that spend qualifying for full B-BBEE points by the donating party.

The thought behind the above is that many law firms around the country now have a large focus on B-BBEE. However, many are only too willing to simply pay amounts towards social causes in order to achieve points, rather than put in the actual effort themselves. **The proposal above**



is that law firms should be required to do a certain amount of actual social-based work and, as an incentive, they receive the appropriate B-BBEE points through the fees (or spend) that they would ordinarily raise and receive from attending to such work. In this case, conveyancers could attend to transfers at full tariff rates, but instead of receiving the full fee, the conveyancer would contribute those fees to their B-BBEE spend.

It would be even better if the Legal Practitioner’s Council would agree to introduce the above as an obligation of all attorneys around the country to contribute a certain amount of time or, as is the case with the medical sector, recently admitted attorneys/conveyancers could be required to do a certain amount of social work before they are able to be admitted.

The above recommendations could also be included in the new B-BBEE legal sector guidelines, which are in the process of being proposed and promulgated.

Municipalities

Municipalities who are responsible for service delivery cannot effectively manage their rates base without complete and accurate valuation rolls. Every property within the municipality must therefore be registered in the name of the rightful title holder and recorded as such in the municipal valuation roll together with the property valuation and its zoning.

The iLembe Registering Property Reform Pilot B project clearly illustrated the very large number of properties with clear boundaries and top structure that are still on land registered in the name of the state or the municipality itself. The Pilot A project additionally illustrated the very large number of properties that are registered in the name of deceased owners that have died intestate.

Additionally, there is clearly a large number of

informal sales that have been transacted dating back to soon after the low-cost houses were originally built (in contravention of the five year no-sale rule) and subsequent to that right up to today. Once a property is sold ‘off the grid’ its de facto ownership is not recorded in the Deeds Office and therefore the municipal financial system will be compromised with respect to the recorded property owner’s rates and municipal service accounts.

Furthermore, illegal development and building encroachments become even more difficult to control in these areas. Residents witness this and so the downward spiral of the illegal construction free-for-all begins. In certain areas in the KwaDukuza Local Municipality this is certainly the case. The building inspectors have lost the battle to control illegal development not only off plan and in respect to building lines and encroachments, but even on environmentally sensitive land.

Mass title regularisation is required in order for rightful owners to be held accountable for future property encroachments, zoning transgressions and outstanding rates and services accounts. By not fixing this, the situation will only worsen and become impossible to fix. By taking charge of this initiative, the municipalities will increase their chances of increasing their credit rating and attracting the Municipal Infrastructure Grant and other grant funding.

The fundamental lesson learnt is that the more these ‘titling anomalies’ are left undone, the worse the depth (complexity) and extent (spatially) the problem becomes. **The spiral downwards in terms of the situation on the ground is mirrored by the spiral upwards in terms of the amount of work and expertise required to fix it.** With all the energy and commitment of the project team together with the funding available under the Title Restoration Grant, it took three years to fix numerous



problems in some of the stagnated housing projects to get to the point of being able to issue some title deeds, with still more time, effort and energy required.

Allied to this observation is the fact that municipalities and their housing project implementing agents are simply not capacitated to deal with these project anomalies. Both the municipal human settlement project managers and the implementing agent project managers are used to dealing with housing issues. They are not equipped to deal with land-legal issues and beneficiary administration issues. Consequently, it is the land-legal issues that are commonly overlooked and are only discovered by the municipality the first time properties are at the point where attempts are being made to transfer them to beneficiaries. This generally only occurs right at the end of the housing project life cycle. Together with the difficulties in procuring the required engineering services certificates, these two areas are the biggest causes of title deed issuance failure in low-cost housing projects.

It was also learnt that municipalities are utilising

the rates clearance certificate process as a ‘back-stop’ mechanism or ‘gate’ due to the inability of various municipal departments to carry out their tasks and obligations adequately or even at all.

As an example of this, it was found that, even though the rates clearance certificate application process should be focusing entirely on whether the current owner has paid the rates/ taxes pertaining to a property for at least the last two years before the application, the municipalities are distributing the application to various departments to check for other unrelated compliance issues, such as building control. If, at that point, it is found that building plans are not up to date, the municipality will then refuse to issue a rates clearance certificate until the building compliance issue has been resolved, even though building compliance has nothing to do with rates and taxes. Simply put, the municipal departments are failing to attend to their own obligations/mandates within their day-to-day tasks and then relying on the rates clearance process as a back-stop. This not only leads to delays in the transfer process, but once again often leads to beneficiaries resorting to

the informal sale/transfer process.

In addition to the above, **the fees that some municipalities are charging for the application and issue of rates clearance certificates is high (over R500) and many beneficiaries simply cannot afford this.** The latest trend is that district municipalities are now charging for the application and issue of water clearance certificates which exacerbate the high clearance costs. The combination of the factors again leads to beneficiaries pursuing the informal over the formal transfer process, leading to situations that are more complex and more costly to fix as further informal transfers are affected. A prime example of these exorbitant charges is the water clearance application and certificate amounts charged by iLembe District Municipality which is outrageous in the context of low-income housing projects.

With all the above observations noted, it is recommended that municipalities join in an effort to establish local land offices that are capacitated to deal with land transaction matters. At the same time, these municipalities need to critically relook at their existing practices with respect to rates clearance certificates issuance on the one hand and building control on the other. If a magic wand

was waved and every single historical land titling issue was dealt with, from today an effective and affordable land transaction system and service needs to be in place to maintain that status quo going forward.

Other recommendations

The observations and recommendations made in this case study have been made primarily with reference to existing legislation and state entities involved in enacting that legislation together with the professionals concerned. The elephant in the property titling room is that no matter how efficiently the existing stakeholders act in effecting property transfer under existing legislation, the system is too expensive and too slow to meet the needs of owners of low-cost properties. Even if a local land office was in place to address the accessibility and some of the expense issues, the existing legislation and the taxes and fees that go hand in hand with it, will still encourage informal sales. New legislation needs to be introduced in order to truly reform the property registration system and ensure a sustainable system in low-cost areas in the future. This is a major recommendation of this report and includes recommendations related to planning, surveys, transfer and registration, and transfer and registration.



Conclusion

The Pilot A projects were generally a resounding success. Not only did they test and prove the large appetite of communities in low-cost housing areas for their title deeds, but they also quantified the situation on the ground with respect to the distribution and reasons for the claimants coming forward to the Pilot A centres. The bonus was the resolution of many, but certainly not all, of these cases and ultimate issuance of title deeds through available funding streams in both Sundumbili and Groutville.

The challenge remains however with the many hundreds of thousands, if not millions, of South Africans that would lay claim to their title through a Pilot A process given the opportunity. And then how to resolve these cases without funding available nor a government mandate to sponsor most of these title issuance and title transfer cases? More appropriate legislation is required to both resolve these cases en masse and also provide for a much quicker and more affordable registration system for properties below a certain agreed value going forward. This will ensure sustainability of the property registration system rather than once off projects or programmes such as the Title Restoration Grant that goes only a small way to chipping away at a mammoth backlog over a set period.

Overall, the incentives to stay 'off the grid' from a property registration perspective can outweigh the positive of owning an asset in the minds of some low value property owners. The Pilot A projects did, however, show a strong desire by particularly the older generation to pass down a registered asset to their heirs.

Contrasting somewhat to the great success of the Pilot A projects, most of the Pilot B projects produced challenges and time delays beyond any level envisaged at the commencement of

the project. It is true that Covid-19 severely affected field operations such as survey and beneficiary administration in 2020 and early 2021. And frequent closures of both the Surveyor-General's Office and the Deeds Office were also experienced over this period while government staff were frequently working from home. However, the number of land-legal issues overlooked by the implementing agents in some of these projects together with on-the-ground issues such as encroachments and illegal structures caused both huge delays in project progress as well as demanding monumental efforts at times to break through the barriers presented.

Delays in the procurement and the appointment of professional staff, and in particular delays in acquiring approvals, signatures, documents and certification from various parties particularly during times of staff change and Covid-19 were frustrating and hugely delaying.

Towards the end of September 2022, a total of only 215 title deeds had been issued through the Pilot B project. This is a far cry from the target of 600. However, as had been noted in the Pilot B report, the 223 imminent Groutville transfers as well as the additional yields imminent from Inyoni and in Sundumbili should enable that target figure to be reached very soon. Several thousand more title deeds should be issued in 2023 due to the barriers eventually broken down in these projects.

What Pilot B did demonstrate was that without all the intervention and support work done by the project team, very little movement would have happened at all on most, if not all, of the stalled housing projects. Title deed issuance is simply not a financial priority of the implementing agents, nor is it lucrative work for their conveyancing attorneys particularly with old housing projects. It takes some extraordinary effort to move these projects along.