

How KANU government sold Airports

By KEN OPALA

As far as aviation standards go, Jomo Kenyatta International Airport is a hub of flying. Planes take off and land one after the other, leaving a buzz and hum of smooth travel and an organisation at peace with itself.

Yet unknown to the millions of people who use this facility every year, a good chunk of the land that Africa's busiest airport sits, including a planned runway, is owned by private individuals who can wake up one day and claim their plots.

Our investigations have revealed that more than 250 plots have been hived off land belonging to various airports in the country – more than half of them at JKIA – and sold to private individuals, most of it during the era of President Moi.

If the demolition of upmarket homes in Nairobi's Syokimau shocked the nation last November, the grabbing of land belonging to Kenya's key airports is deeper and unprecedented.

This development raises questions about plans by the Kenya Airports Authority — the quasi-statutory corporation in charge of the country's airspace and air facilities — to expand and modernise its key aviation facilities countrywide, given that private developers have taken up plots earmarked for airport expansion and modernisation.

Extensive investigation and examination of documents, *The Nairobi Law Monthly* can reveal that land merchants have targeted nearly all airports countrywide. Our investigations show that the scandal that was Syokimau stretched beyond the allocation of Jomo Kenyatta International Airport (JKIA) land to just three parties — Mlolongo Brothers Association, Jumbo Housing and Uungani Settlement Scheme.

In fact, 152 parcels have been hived off JKIA — the principal aviation hub in East and Central Africa. Implicitly, while the evictions at Syokimau affected just three allocations — Mulolongo, Jumbo and Uungani — KAA still has lots of land still in private hands.

Sensitive parts of the airport (registered as LR no. 21919) are actually in private hands. Indeed, portions of the apron — the tarmacked area of the airport on which planes are turned, loaded and offloaded — is owned by private individuals, according to documents in our possession.

Also in private hands is the land earmarked for the airport's second runway and parts of the main flight path (the route a plane follows in the air to take off and land), thanks to underhand dealings by individuals and staff at Ardhi House. The apron and the runway are essential to the smooth functioning of an airport, and if those who received titles were to claim and develop, their parcels of land, operations in Kenya's airspace and at its airports would face serious disruptions.

Private land developers have taken up close to 250 parcels that previously were the property of the KAA: JKIA (152 parcels), Wilson Airport in Nairobi (25), Kisumu (23), Moi International Airport in Mombasa (11), Eldoret (13), and Malindi (1).

Documents show that two pieces – LR no. 9042/632 and LR no. 22405 – have been shaved off the JKIA cargo apron and another apron at the Old Airport, 18 pieces off the main flight path at JKIA including LR no 23232 and LR no.25799), and 10 parcels have been excised from the proposed second runway, the parcels now claimed by Mulolongo, Jumbo and Uungani.

Plot NRB/EMBAKASI/KATANI/LR no.13512 (allegedly owned by Mulolongo Brothers) and plot LR 14231 (claimed by Uungani) have been earmarked for the second runway whose construction is being funded by the World Bank.

State House

According to our sources at Ardhi House, the headquarters of Ministry of Lands, the allottees include ministers and senior public servants, and political operatives. Others include savings and cooperative societies (popularly known as saccos) of key parastatals. Some of the parcels are owned through proxies and private companies.

Among the notable allottees is a business side-kick of a once-powerful State House Controller. This individual is a director in dozens of companies linked to a former top politician.

Indeed, among the beneficiaries were individuals who were influential during the regime of President Moi. Some were directors of fleets of companies and state corporations. One of them formed a company that dealt exclusively in giving out airport land.

Instructively, and as is with the case with Mulolongo case, some of the land allocation files have disappeared from Ardhi House – and at the Registrar of Companies as well.

KAA concedes that its land has been “illegally allocated to private developers in spite the fact that the same had been previously reserved for airport purposes”, according its chief executive, Engineer Stephen Gichuki, in a letter to Lands and Settlement permanent secretary Dorothy Angote dated December 24, 2010.

Corruption

In the letter, Engineer Gichuki praises the PS for revoking some titles through Gazette notice 15579 of November 26, 2010 and urges her to annul more, which he lists. “We ... request for revocation of land titles ... for the reason that those parcels of land fall within the land titles of the airports (LR 21919).”

Contacted, sources at Ardhi House said the Ministry was awaiting communication from the Ethics and Anti-corruption Commission. “Once we get the requisite response, we will let you know,” said a highly-placed source who declined to be named until the Ministry received a “substantial” response from the anti-corruption body. The Ethics and anti-corruption commission is reportedly pursuing the case.

KAA is seeking nullifications of the titles on the grounds that their being held by private parties represents a security risk to Kenya’s airspace. According to an internal memo by KAA lawyers, the failed terrorist attempt to bring down a chartered Israeli airliner that had taken off from Moi International Airport in February 2002 compelled several airlines to withdraw from the JKIA circuit, leading to a loss of revenue.

“One of the reasons cited for the (withdrawal) was the lack of sufficient security measures at the JKIA,” says a brief by KAA lawyers.

After the attempt on the Israeli airliner in 2002, the World Bank gave Kenya a \$10 million loan to develop a perimeter wall around JKIA, and to help construct the second terminal, which is almost complete. The tender for the construction of the wall went to Nyoro construction company for sh100 million but the company couldn’t proceed after Uungani went to court claiming that KAA was encroaching on its land.

The International Civil Aviation Organization, say sources at KAA, had threatened to declare JKIA unsafe following the Mombasa incident.

Double Allocation

KAA has moved to fence off part of the Syokimau land recovered from land developers last November although it is yet to embark on the development of a second runway.

It is still not clear to what extent the allocations of KAA land are legal. However, a source at Ardhi House claimed a number of them have titles through what has come to be known as “double-allocation”, a euphemism for irregular registration of land owned by state corporations. Implicitly, the government risks entering a legal minefield were it to move to annul titles its own agents issued to the current holders.

The fact that the KAA chief Engineer Gichuki is seeking to annul the allocations implies that the allocations were indeed made; that the contentious pieces have received LR numbers just shows that the questionable dealings took place in the offices of the Lands Ministry, says the source.

“What will be the government’s argument (in seeking revocation)? This is a case of double-allocation. The titles were given out by the authority of the Commissioner of Lands. They are not forgeries,” said a State counsel who does not want to be named owing to the sensitivity of the matter. “It’s a huge dilemma for the State,” he said.

KAA has put three notices in the media (November 14, 2003, October 7, 2008 and September 25, 2010) about the assault on LR no. 21919, a parcel of JKIA land.

Experts in land matters say that any land set aside for a particular purpose is strictly, in legal terms, not available for re-allocation. “When the Commissioner of Lands gives out alienated land, then it’s an illegality,” said lawyer Paul Ndung’u, who served as the chairman of the 2003 Ndung’u Commission that was appointed by the new NARC government to look into illegal or irregular allocation of public land in Kenya.

He said “in excess of 300,000” titles to such land throughout the country are illegal, and that “is a conservative figure”.

KAA land had already been acquired and paid for by the mid-1990s. It wasn’t available to anybody, Mr Ndung’u said. “There must have been a conspiracy between private individuals and planners and people in the Ministry of Lands.”

Airport Personnel

Indeed, the allocation of airport land wouldn’t have been possible without the involvement of influential people in Ministry of Lands. “It is a case of people entrusted with safeguarding public property robbing the public,” said Jotham Okome Arwa, a lawyer who is an expert in land matters.

“Indeed, there was high-level conspiracy in the Ministry of Lands that require thorough investigations,” according to the report of the Mutava Musyimi Parliamentary committee on Syokimau Allocation.

This is a story of an intricate network that operates in several state offices and is linked to land-buying agents, public servants, lawyers and surveyors. Ardhi House is in the thick of the deal-making. As will be seen in the following story about Syokimau, files were created and then made to disappear inside the ministry’s walls; requisite payments were made; and government institutions gave out conflicting information.

But the key question is: Did KAA personnel knowingly abet the fraud? The Mutava Commission tends toward blaming KAA for inertia.

(The KAA Communication/Corporate Affairs Department failed to respond to a questionnaire this writer sent it almost three months ago. It called off three interview appointments at the eleventh hour)

As early as the 1990s during the tenure of Peter Kipyegon Lagat, the chief executive officer, KAA had placed itself on a collision course with land grabbers. As the authority dilly-dallied, private developers, together with unscrupulous Ardhi House staffers, had positioned themselves

to grab plots of land. By failing to fence off its assets, the authority exposed them to the grabbers.

The story begins in June 7, 1994 when the new KAA absorbed the now-defunct Kenya Aerodromes Department through Kenya Gazette Legal No. 201. Earlier through notices 439 and 440 of February 25, 1982, the Aerodrome Department had Syokimau Farm Ltd (L.R 7149/11/R), a former sisal plantation owned by a white Kenyan, with an eye towards the expansion of the airport.

(It is still not clear how much land KAA acquired from Syokimau Farm, nor how much was inherited from the Aerodromes Department)

By 1995, the assets transferred from Aerodromes had “not been valued and transferred” to KAA, according to Parliament’s Public Investments Committee (PIC) report. “Under the circumstances I have been unable to confirm that the fixed assets are fairly stated in the accounts,” the committee chair, Anyang’ Nyong’o, stated.

The following year, the PIC revisited the issue. “The ... correctness of the stated fixed assets figure (given by KAA chief executive) is doubtful,” the watchdog committee concluded. Four years earlier, the chief executive had confirmed to the Auditor-General (Corporations) that KAA “did not maintain an up-to-date fixed assets register”.

KAA, despite contributing about 10 per cent to the country’s Sh2 trillion (about Sh200 billion) annual income, had failed to secure its assets and for a long time did not even have a register of its fixed assets. Basically, KAA did not know how much land it owned and may still not know.

Confusion can create a propitious environment for unscrupulous public servants—and their hirelings. It is an all-too-familiar opportunity for fraud and explains why many public sector employees have fought against the computerisation of state registries. In the case of land management, Ardhi House has been the stumbling block to the establishment of the Kenya National Spatial Data Infrastructure that would facilitate information-sharing among institutions.

The confusion over the title only served to attract speculators.

Yet even as the letters passed to and from Ardhi House, the KAA did little to stop further encroachment on its land. It would appear that influential officials within the KAA were not in a hurry to expedite the court cases the Authority had filed against Mlolongo Brothers and the Uungani Scheme way back in 2004.

“Evidence adduced indicates that (KAA) has not been ready to prosecute the case, having been seeking adjournments citing lack of preparation and filing a list of witnesses among other issues,” the Mutava Musyimi committee noted .

NOTE: This article was published in the October issue of the Nairobi Law Monthly