

Securing a Building Permit in Uganda



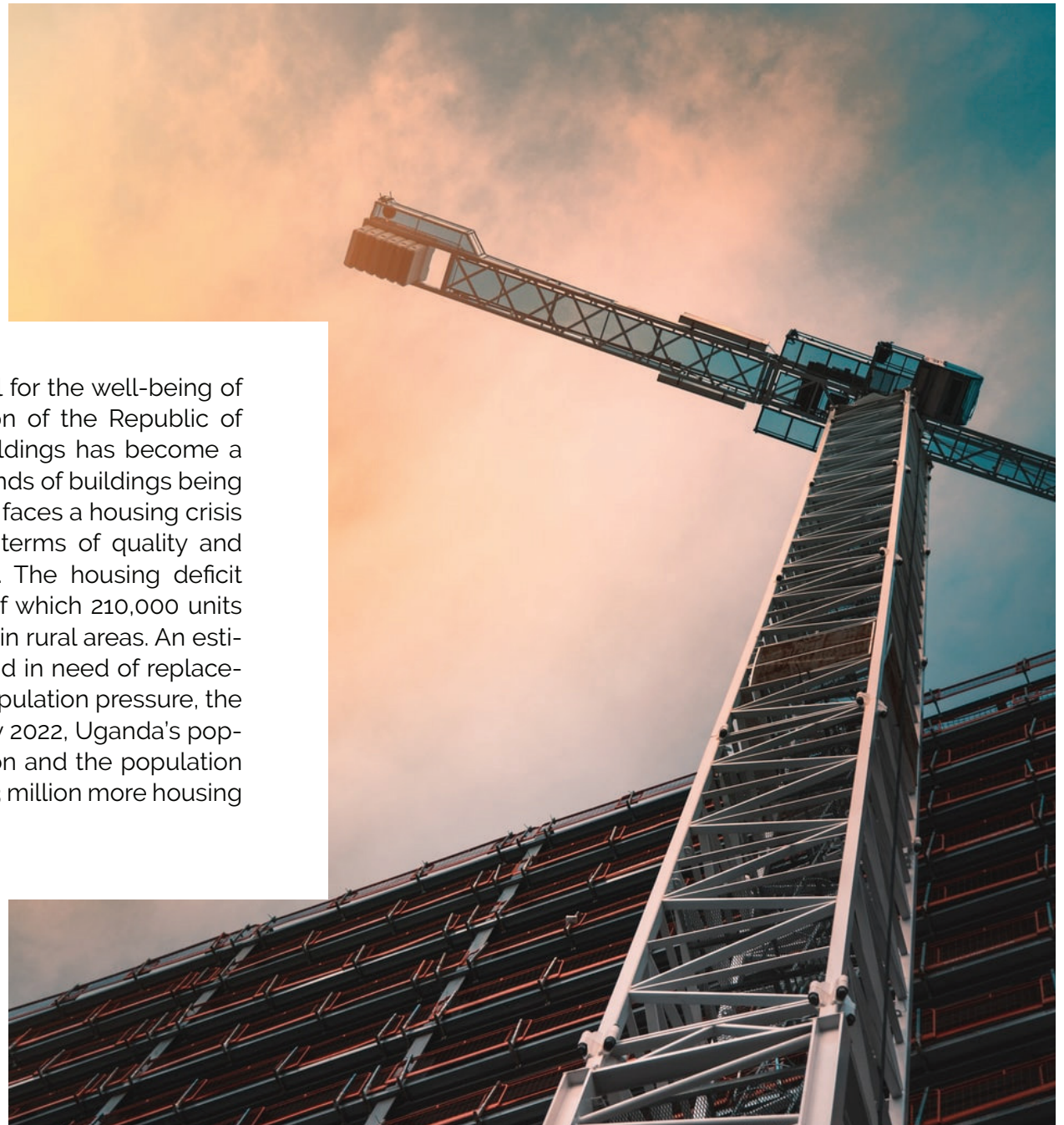
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1. Introduction

Housing is a basic human right, essential for the well-being of all mankind as per the 1995 Constitution of the Republic of Uganda¹. In Uganda construction of buildings has become a large and growing sector with different kinds of buildings being erected every day. However, Uganda still faces a housing crisis characterised by inadequate homes in terms of quality and quantity in both rural and urban areas. The housing deficit stands at 2.4 million housing units, out of which 210,000 units are in urban areas and 1.395 million units in rural areas. An estimated 900,000 units are substandard and in need of replacement or upgrading². Due to increasing population pressure, the situation might get worse, for example by 2022, Uganda's population is projected to be about 48 million and the population growth is expected to require more than 3 million more housing units³.



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With this, there is need for regulation to ensure that construction of buildings is in accordance with the law and safe for the end users. The Universal Declaration of Human Rights of 1948 recognizes the right to housing as an important component of human rights. Other international declarations and charters such the International Covenant on Economic, Social and Cultural Rights of 1966, Agenda 21 of 1992, the Istanbul Declaration and Habitat Agenda of 1996; the African Charter on Human and People's Rights (1986), the East African Community Treaty and Goal 11 of the Sustainable Development Goals (SDG) have further reaffirmed the importance of the right to housing⁴. The Government of Uganda too recognizes the strategic social and economic importance of housing in the national economy and, particularly, to the socio-economic transformation of the country as highlighted in Vision 2040. (MLHUD, 2016).

The current contribution of housing to Uganda's economy and GDP is estimated at an annual average of 5% of GDP over the last decade. This is part of the 13% construction sector contribution to the GDP⁵. Investment in housing enhances macro-economic stability as the resources are spent on capital rather than consumptive expenditure. It also has the potential to generate revenue through taxes on building materials, revenues from premium, rentals or property taxes and other fees. Housing development has significant backward and forward linkages with capacity to generate employment and enhancement of household income through; creation of industries in production of building materials, building construction, maintenance and related services⁶.

¹ Article 27 of THE 1995 CONSTITUTION OF UGANDA.

² NATIONAL HOUSING POLICY 2016, page 10.

³ Ibid, page 5.

⁴ Ibid, page 1.

⁵ Ibid, page 4.

⁶ UGANDA BUREAU OF STATISTICS 2017, page 72.

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Healthy and safety of construction workers and end users is so paramount. However, there have been many reports of buildings collapsing in various parts of the country especially in Kampala during construction due to shoddy work in a bid to cut costs, poor workmanship, disregard to prevailing laws, and unqualified contractors/professionals among others.⁷

There are various laws regulating the different aspects of construction, the laws include; the Building Control Act 2013, The Physical Planning Act 2010, The Land Act Cap 227, The National Environment Act 2019, The Occupational Safety and Health Act 2006, The Public Health Act Cap 281, to mention but a few. Some of the regulations include; The Building Control Regulations 2020, The Building Codes 2019 among others. The Physical Planning Act provides for the application and issuance of permits and prohibits any sort of construction without obtaining the necessary permits from the appointed authorities which is the physical planning committee and other stake holders of the district established by the Building Control Act. It is important to note that the current legal framework is rigid and unable to guide housing development in the country. This is because legal framework for the housing sector is inadequate and scattered under different instruments, which makes it hard for the sector to effectively implement them and Some of the laws are not harmonized or coordinated and tend to contradict each other in some aspects.

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2.1 Commercial or residential building.

Commercial buildings are those whose at least 50% space is used for commercial purposes, they include; office buildings, warehouses and retail buildings while a residential building is that which provides more than half of its floor area for dwelling purposes. Residential buildings include rental houses, most residential buildings are found in urban areas and, they include both storeyed and non-storeyed buildings. Proper planning is required to ensure other services like drainage systems, roads, electricity, water, and sewage systems are well managed. Uganda still grapples with challenges of lack of security of tenure, poor planning, corruption, poverty, rigid institutional structures, and push the cost of land etc. These factors inhibit the middle income bracket and the poor from accessing adequate housing and living conditions. This is why we have 60% of residential buildings as slums built without following the legal requirements like obtaining permits first. In most cases residential houses are in poor conditions, poorly maintained yet highly priced for users⁹

Section 35(2) and (3) of the Building Control Act lays down the requirements for the application for this type of permit to include. The application is made to the Building Committee of the area in which the intended construction is to take place, and the application shall include the following; name, physical address and postal address, it must be accompanied by the land title or other proof of ownership of land, qualifications of the architect and engineer, a number of copies of the building plans, a letter from the village council chairperson, development permission from the committee, boundary opening report from surveyor, electrical drawings, mechanical engineering drawings, design calculations for temporary and permanent works. The law further gives particulars in case the building is of a multi-stored nature to include; qualifications of the engineer, building plans fully endorsed by the engineer, geotechnical report made by an accredited geotechnical laboratory and fully endorsed by an engineer. This is all attached to the application for the permit and submitted to the building committee for review and approval. If the application does not comply with the legal requirements, reasons for the rejection must be given to the applicant.

These must all adhere to the provisions of the Land Act as far as land ownership is concerned, Environment Impact Assessments and certificates must be obtained in case the building may have any environmental impacts in accordance to the National Environment Act (NEMA). The plans must comply with the Occupational and Safety provisions as well as the construction itself.

⁷ FAILURE OF STRUCTURES IN EAST AFRICA WITH FOCUS ON THE CAUSES OF FAILURES IN THE CONSTRUCTION PHASE; Henry Mwanaki Alinaitwe and Stephen Ekolu. At page 2 & 5.

⁸ BLACKS LAW DICTIONARY 2ND EDITION

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2.2 Public buildings.

A public building means any structure that is owned or leased and principally used by a government agency for public business. These are found both in rural and urban areas and usually commercial in nature. Examples include; Courts of Judicature, Uganda Police, district offices, sub county offices, hospitals and health centres etc.

Regulation 21(2) of the Building Control Regulations provides for further particulars that must be fulfilled to include; geotechnical report made by an accredited geotechnical laboratory and fully endorsed by an engineer, hydrological investigation report, a certificate of environmental impact assessment from NEMA, approval from the commissioner of Occupational Safety and Health, a traffic impact assessment, a certificate from Ministry of Energy, building plans, qualifications of engineer and architects with endorsements from their issuing authorities, boundary opening reports as stated in section 35 of the Act.

According to Regulation 5(1) of the Building Control Regulations, the Building Committee shall as a condition for obtaining a permit require the owner of the building to employ professionals like an architect, an engineer, surveyor, health safety expert, and other necessary professionals necessary for the operation.

2.3 Minor and temporary buildings.

A temporary building means a structure intended for removal after a certain period of time as set out in the building permit. These are usually put up a specific purpose for a specified period of time.

The law under section 39 of the Building Control Act requires the person to apply to the Building Control Officer with the requirements which include; sketch plans, approval from the Building Committee, architectural drawings, and structural details. Sometimes the applicant may be required to put a notice in the gazette or newspaper of wide circulation and proof of payment of the prescribed fee. Once the permit is issued, it is valid for a period of six months for the building works to commence except that this period can be extended for good cause upon application by the permit holder.

⁹ NATIONAL HOUSING POLICY 2016.

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2.4 Occupation permits

An occupation permit is a statutory document issued by the building authority to certify the satisfactory completion of a new building, part of a new building or temporary building.

Section 44 of the Building Control Act and Regulation 20 of the Public Health (Building) Rules provides for issuance of an occupation permit once an application is made. This is once the building is completed or partially completed. The Building committee upon notice of completion of the building shall with fourteen days examine the building and if satisfied that all aspects were complied with, issue an occupation permit. However if the building has not been erected in accordance to the Act, refuse to issue the permit giving reasons in writing as to why. Any person who contravenes the law in regard to the occupation of the building commits an offence and is liable to conviction or a fine.

An occupation permit is valid for a period of twenty-four months and can be renewed upon application to the building committee.

In Uganda, buildings are rarely completed within the required timelines due to various reasons and there is rarely follow up by authorities to enforce the policy or legal requirements like penalties.¹⁰

2.5 Application, approval and issuance of building permits.

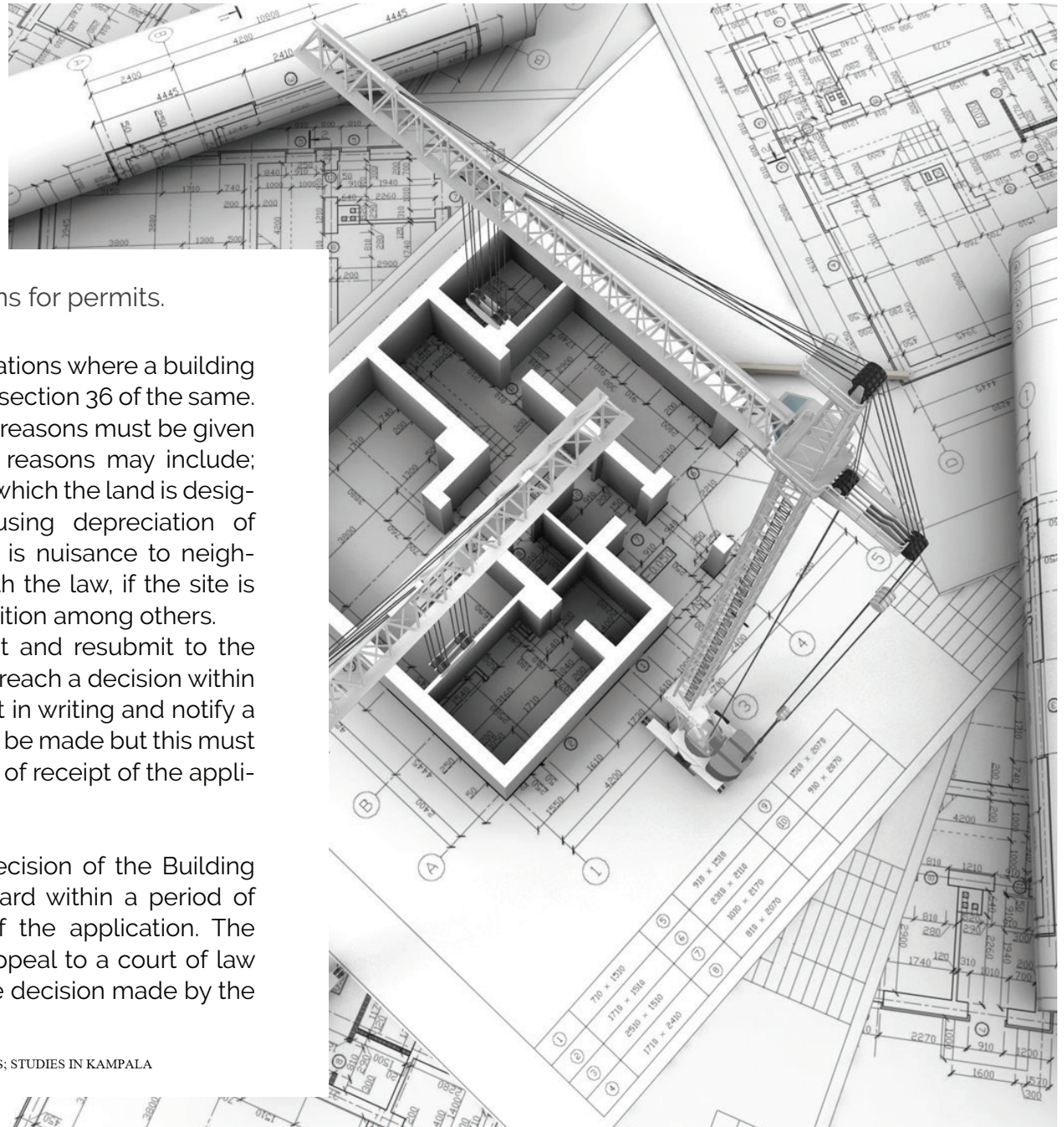
The Building Control Act under section 36 lays down the process of issuance of permits. Once the application is submitted to the Building Committee such application is reviewed and a permit is issued within a period of thirty days after receipt of the application.

Once a permit is issued, the committee must endorse the building plan and other documents and retain a copy of each and return the rest to the applicant.

Housing development has largely preceded physical planning for inadequacy and poor enforcement mechanisms surrounding physical planning in the construction sector. Consequently, leading to development of un planned settlements. Unnecessary delays by local authorities in issuance of building plans which leads to developers to build illegally with the associated risk of contravening building rules. General lack of public awareness on planning, housing and building regulations especially within the rural areas.

There is need for a one stop approval center where all Government departments in the approval can handle the process with precision. This will eliminate government creates bureaucratic delays in approval and implementation of projects.

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2.6 Deferral and rejection of applications for permits.

The Building Control Act provides for situations where a building permit can be deferred or rejected under section 36 of the same. If the decision is to reject the application, reasons must be given in writing also within thirty days. These reasons may include; change in land use different from that for which the land is designated, environmental degradation, causing depreciation of neighbouring properties, building which is nuisance to neighbours, danger to life, doesn't comply with the law, if the site is filled up with waste subject to decomposition among others. The applicant may amend the applicant and resubmit to the committee, if the committee is unable to reach a decision within thirty days, they must notify the applicant in writing and notify a reasonable period in which a decision will be made but this must not be later than sixty days from the date of receipt of the application.

If the applicant is aggrieved with the decision of the Building Committee, they may appeal to the Board within a period of thirty days from the date of receipt of the application. The aggrieved applicant still has a right to appeal to a court of law which may confirm, reverse or modify the decision made by the board.

¹⁰ OTIM ET AL. THE CAUSES AND IMPACT OF UNCOMPLETED BUILDINGS; STUDIES IN KAMPALA CITY; AET2011 Conference papers at page 360.

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2.7 Time limits and revocation of permits.

Section 38 of the Building Control Act provides that once a permit is issued, the works must commence within a period of twelve months and completed within a period of sixty months from the date of commencement. However if for some reasons unforeseen, the person fails to comply with the stipulations of time, they can apply for extension of the permit and the committee must not unreasonably withhold the grant of extension.

Any person who contravenes the provisions of the law in regard to time limits is liable to imprisonment for thirteen months or a fine that may increase if a notice of the contravention is given and the default is not remedied.

Building permits for minor building works are valid for a period of six months for the building works to commence except that this period can be extended for good cause upon application by the permit holder with reasons.

A permit may be lawfully revoked by the building committee once certain circumstances come to their attention and these include; use of prohibited building methods and materials, change or replacement of building professionals without notice to the committee, building works not being in accordance to the initial drawn plans or when time limits have elapsed and there is no application for extensions. If any of the above are not discovered and works go on, that's how we get cases of buildings not being to expected standards, building collapses killing people etc. the stoppage of works will protect people's rights to life, proper housing enshrined in the constitution of Uganda.

The laws clearly provide for lenient penalties that are not corrective and punitive enough to change in behaviour of defaulters or violators of standards.

The Building Control Regulations 2020 provide for fees to be paid for applications and other services, the content of building plans forms to be used and the procedure for the applications

There are other types of permits that may be obtained as well.

Renovation permits – these are classified into two; major and minor renovation permits which allow the applicant to make minor or extensive repairs to an existing building.

Chain link fencing permit – this allows the applicant to erect a fence to protect property.

Hoarding permit – allows the applicant to erect a fence to protect a construction area for safety

Demolition permit – allows applicant to demolish a building.

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2.8 Fees payable while applying for a permit as provided by Schedule 4 of The Building Control Regulations, 2020.

Type of permit	Fees in UGX
Architectural plans inspection	1,000UGX per Square Meter of ground floor area
Structural plans inspection	30,000UGX per suspended slab
Occupation permit	80,000/=
Renovation permit	100,000/=
(minor renovations)	200,000/=
Renovation permit	100,000/=
(major renovations)	50,000/=
Chain-link fencing permit	100,000/=
Demolition permit	100,000/=
Hoarding permit	20,000/=
Other Inspections	
Application fee	

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3. Courts approach to approval of building permits.

In Uganda and other countries, the courts have gone at length to pronounce themselves on principles regarding approval of building permits.

The High Court in **Tugume Eric vs Nalwadda & KCCA 152/2015**¹¹ where the applicant had erected a building encroaching on the 1st respondents land without first obtaining the necessary permits from the authorities and his (applicant) building plans had not yet been approved. .. In dismissing his application for a temporary injunction to maintain the status quo till determination of the main suit. Lady Justice Elizabeth Nahamya declined to grant the injunction on the basis that the applicant was in violation of the law for having commenced developments prior to obtaining approvals from the authorities.

In another case of **River Gate Properties & Anor vs Asmal NO and others (97167/16)[2018] ZAGPJHC 89**¹² in the High Court of South Africa, a similar decision was made where the applicants sought for a building that had been erected prior to obtaining lawful approval to be demolished. Another order sought was to prohibit the respondents from permitting occupation of the buildings until the occupation permits were obtained. The respondents had obtained an illegal permit from an officer not authorised to do so, they were later notified by the municipality to halt construction which they ignored. The buildings were also being erected in a way contrary to the required building standards. It was held that the buildings be demolished for being erected contrary to the law and without approval from authorities and costs were granted to the applicants.

Both decisions clearly show that erecting a building contrary to the legal requirements may automatically lead to demolition and loss to the owner.

¹¹ [2015]UGHCCD 53

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4. Conclusion and Recommendations

As much as Uganda is trying to develop the housing sector to enhance development, there are still a number of challenges. The challenges include; limited co-ordination among actors and stakeholders involved in housing development on sector related issues, fragmentation, inconsistency and overlapping of roles, responsibilities and lines of accountability. Others hindrances include inadequate private sector capacity to effectively engage in housing development, lengthy and bureaucratic planning and development approval processes which often lead to illegal of constructions without appropriate approvals.¹³

The current legal framework is inflexible and unable to guide urban development as the legislative frameworks are contextually irrelevant to current socio economic realities. Most of the legislative provisions and policies are never fully implemented as they are usually made without implementation and enforcement strategies.

Administrative procedures for approvals are time consuming, excessively expensive and complex forcing a large proportion of people to opt for de facto informal or illegal construction methods.¹⁴

These can be dealt with by reviewing and harmonizing all housing related legislations, Develop new laws to strengthen and promote housing development, strengthen collaborations among sectors in order to improve housing delivery, provide support to build capacity at both central and local government levels, implement all the housing related policies and laws

There is need to institute smart management systems to involve all institutions and stakeholders in building in the construction sector as local authorities lack the capacity and resources to handle the rapidly growing urbanization at hand.

Never the less the Uganda Housing Sector Profile indicates that in spite of the challenges, Uganda has been working strategically to overcome many of the obstacles constraining the construction sector by undertaking to implement national housing policies, reforms in the building control legislation, strengthening the National Bureau of Standards which are responsible for among others for developing standards, inspection and quality assurance of building requirements.

¹² [2018] ZAGPJHC 89

¹³ WORLD BANK (2010). World Development Indicators (WDI) Online

¹⁴ Ibid



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