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Newsletter

Whats new
IN THIS
ISSUE

EDITOR'S NOTE, JULY EDITION

Dear Esteemed Clients, Stakeholders and Readers,

This edition reaches you a little later than its name suggests, July having already given way to August somewhere between the writing and the sending. We have decided not to disguise that, because the delay turns out to make an accidental point in our favour. Nothing in the three matters we are about to describe has become any less urgent for the passage of a few weeks, and one of them illustrates precisely why urgency of this kind rarely announces itself on schedule.

Consider what was, on paper, a routine transaction. In 2016, Tanzanian telecommunications law required Tigo to place a quarter of its local business into public hands, an obligation that should have amounted to little more than administrative housekeeping. A third party then stepped forward with a claim to ninety nine percent of the company, and a listing that was expected to take months instead consumed the better part of two years, by which point the moment it had been designed to meet no longer existed. We open this edition with that story because it captures something every one of our commercial clients should sit with for a moment longer than usual: a closing condition is not the paperwork appended to the end of a deal. It is the place where every risk left unexamined during negotiation eventually reappears and asks, with considerable inconvenience, to be settled.

From Dar es Salaam we travel to a construction site that, on the surface, had done everything correctly. Permits secured, contractors engaged, ground broken on schedule. Our second feature asks an uncomfortable question about that apparent order: why do so many development projects in Tanzania stall well after construction has begun, rather than before it. The answer, built around the Blue Amber Resort dispute in Zanzibar and the tens of millions of dollars eventually lost to it, is that legal review of title and approvals is the cheapest insurance a developer will ever be offered, and the one almost nobody actually purchases as such. We have paired that account with the Morogoro Road demolitions and the 2013 Kariakoo collapse, since a pattern this consistent deserves more than a single cautionary tale.

We close in Zanzibar itself, where the temptation to treat a title deed as the end of an enquiry is strongest, and where our final feature explains why it should instead be treated as the beginning of one. What an investor acquires on the islands is not land in the ordinary sense of the word, but a status stitched together across land, planning, tourism and environmental authorities that were never designed to move in coordination with one another, and we set out exactly what that fragmentation costs an investor who assumes otherwise.

Read together, these three accounts share a single quiet insistence. Nothing in this edition fails on the day it is signed. Each one fails later, often considerably later, and always at the moment someone finally has occasion to look closely at what they believed had already been settled. We suspect that is worth five minutes of any reader's time, whatever the calendar happens to say when it arrives.

We would be glad to hear where you have seen this pattern
play out in dealings of your own.

Happy reading!
The Editorial Team
MWEBESA LAW GROUP

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UNDERSTANDING THE REAL PURPOSE OF CLOSING CONDITIONS AND HOW THEY CAN EASILY BECOME DEAL KILLERS

In December 2016, Tanzania's second largest mobile operator applied to sell a quarter of itself to the public, a sale the law required it to make. The listing did not happen that year. It did not happen the year after that either. By the time anyone could say with legal certainty who actually owned the company, its parent had already decided to sell the whole business to someone else.

Millicom Tanzania, trading as Tigo, filed its application to list twenty five percent of its local subsidiary, MIC Tanzania Limited, on the Dar es Salaam Stock Exchange at the end of 2016, in compliance with an amendment to the Electronic and Postal Communications Act that had, earlier that year, made such a listing mandatory for every telecommunications operator in the country. It should, on paper, have been a straightforward transaction. Millicom knew what it owned, the government had told it what to sell, and the Capital Markets and Securities Authority had a well understood process for taking a company public.

Instead, the listing stalled almost immediately, because a company called Golden Globe International Services, together with a second firm named Quality Group, produced a claim that they had acquired 34,479 shares in MIC Tanzania back in 2014, a stake which, if genuine, would have made them the owners of 99 percent of the business Millicom was proposing to sell shares in. The Capital Markets and Securities Authority confirmed publicly that the initial public offering had been suspended pending resolution of the dispute. What had looked, at the point of filing, like a compliance exercise with a fixed government deadline attached to it became, in practice, a two year piece of litigation that reached all the way to the Court of Appeal of Tanzania before Millicom's ownership was finally confirmed beyond challenge.

By the time that ruling arrived, in 2018, the moment for a straightforward listing had largely passed, and by 2022 Millicom had exited Tanzania altogether, selling the entire business to a consortium led by the Madagascar based Axian Group. The mandatory local listing that the 2016 law had required never actually happened. The company that eventually changed hands did so through an outright sale of the whole enterprise, years later, to a buyer nobody had been negotiating with when the original transaction was filed.

Signing is not closing, and the space between them is not empty.

It is worth being precise about what actually went wrong here, because the instinctive explanation, that Tigo ran into an unusually litigious shareholder, understates the more useful lesson available in the story. What actually happened is that a transaction was structured and filed on an assumption, that the underlying ownership of the company being sold was undisputed, and that assumption was never independently tested before the transaction began. A listing on a public exchange has, as one of its basic and non negotiable preconditions, that the party selling shares can demonstrate clean and undisputed title to what it is selling. That is not a formality bolted onto the end of the process. It is close to the entire point of the process, and Millicom discovered, only after filing, that the question of whether it actually held that clean title had never been conclusively settled at all.

This is the pattern that closing conditions, and conditions precedent more generally, exist to manage, and it is worth stating plainly what that management function actually is, because the term itself invites a misunderstanding. A condition precedent is not a hurdle inserted into a transaction to slow it down, and treating it as procedural throat clearing, the sort of clause a junior lawyer drafts from precedent while the real negotiation happens elsewhere over price and structure, is precisely the mistake that turns a condition into the mechanism by which a deal actually collapses. The commercial function of a closing condition is to allow two parties to sign an agreement before every fact relevant to that agreement has been fully verified or every consent relevant to it has been fully obtained, while protecting each side from being forced to complete a transaction into a state of the world it never actually agreed to. Between signature and closing, a gap exists, sometimes measured in weeks and sometimes in years, and during that gap, every risk that the parties chose not to fully resolve before signing, whether from time pressure, optimism, or a simple failure to ask the right question, has an opportunity to surface and to matter. A closing condition is the instrument that determines what happens when it does. Treated with the seriousness that price and valuation receive during negotiation, a well drafted set of conditions allocates that risk deliberately, between a buyer who wants certainty and a seller who wants speed. Treated as boilerplate, the same set of conditions allocates that risk by accident, according to whatever language happened to be copied from the last transaction the drafting lawyer worked on, and accidents of that kind are exactly what stalled Tigo's listing for the better part of two years.

The regulator you are waiting on does not share your timeline.

Regulatory approval is the closing condition every Tanzanian dealmaker expects, and precisely because it is expected, it is often the one negotiated with the least imagination. Mergers and acquisitions of any material size fall within the notification requirements of the Fair Competition Act, Cap. 285, whose section 11 obliges the parties to notify the Fair Competition Commission of a merger meeting the relevant turnover or asset thresholds, and whose approval the transaction cannot lawfully complete without.

Banking transactions carry an additional and considerably more searching layer, since any material change in the shareholding of a bank or financial institution requires the prior approval of the Bank of Tanzania under the Banking and Financial Institutions Act, Cap. 342, an approval process that examines not merely competition effects but the character, financial soundness and fitness of the incoming controller in a way a competition regulator never would.

What both of these approval regimes share, and what the parties negotiating around them too often forget, is that the regulator granting the approval is not a party to the transaction, has no obligation to move on the timeline the parties have agreed between themselves, and is entitled to attach conditions to its approval that neither party anticipated at the point of signing. A closing condition that simply states that the transaction is subject to regulatory approval, without addressing what happens if that approval takes twice as long as expected, arrives with conditions attached, or does not arrive at all, has not actually allocated the regulatory risk. It has merely acknowledged that the risk exists and left the allocation to be fought over later, at the worst possible moment, when one side has already begun behaving as though the deal is done.

The Tigo listing was, in its own way, a regulatory approval condition of an unusual kind, since the underlying obligation to sell shares came directly from statute rather than from a negotiated agreement between commercial counterparties, and the government had set a deadline the company was legally required to meet. That should, if anything, have made the ownership question a matter of heightened rather than diminished scrutiny before the application was filed, precisely because a mandatory listing driven by statutory deadline leaves the seller with far less room to negotiate an extension than a voluntary commercial sale would. Instead, the ownership question was left untested until a third party raised it publicly, in the middle of a regulatory process the company could not simply walk away from.

A consent is a veto wearing a polite name

Third party consents are the closing conditions that most resemble the Golden Globe dispute in structure, even where the underlying facts differ, because they all share the same underlying vulnerability: the transaction depends on the cooperation, or at minimum the silence, of someone who is not a party to the agreement and has no obligation to make the deal convenient. A loan agreement with a change of control clause can accelerate an entire facility the moment a target company's shareholding shifts, unless the lender consents in advance, and a lender under no commercial pressure to move quickly has very little incentive to consent quickly either.

A key commercial contract, a lease, a distribution agreement, a long term supply arrangement, may contain an assignment restriction that requires the counterparty's consent before it survives a change of ownership, and a counterparty who senses that its consent has suddenly become valuable to someone will often price that value into the negotiation, whether or not it had any prior objection to the transaction at all. What the Tigo dispute illustrates, more starkly than an ordinary third party consent scenario, is what happens when the underlying question is not merely whether a known third party will cooperate, but whether an unknown or under-diligenced third party exists at all with a claim capable of derailing the transaction.

Golden Globe was not a counterparty anyone had been negotiating with. It was a claimant that surfaced only once the transaction it threatened had already been filed publicly, and by the time its claim was finally extinguished by the Court of Appeal, the commercial window the transaction had been designed to meet had already closed. A properly resourced due diligence exercise, focused specifically on tracing every historical share transaction in the target's register rather than simply confirming the register's current state, is the closing condition equivalent of a vaccination: considerably cheaper before the fact than any cure

Shareholder approval assumes the shareholders agree on what they own.

Shareholder approval as a closing condition rests on an assumption so basic that it rarely receives explicit attention in negotiation: that everyone entitled to vote on the transaction can be identified with confidence, and that the register reflecting who they are is itself beyond dispute. Most of the time that assumption holds, and shareholder approval functions as exactly the procedural formality it is often treated as, a vote that confirms a decision the relevant parties had already reached before the meeting was convened. The Tigo dispute is instructive precisely because it shows what happens when that assumption fails at the most fundamental level available, when the argument is not about how existing shareholders should vote but about who the shareholders actually are in the first place.

A closing condition requiring shareholder approval, however carefully drafted, cannot protect a transaction from a defect in the underlying share register, because the condition assumes the register is a reliable starting point rather than itself being the thing in dispute. Where a target company's shareholding has a complicated history, multiple rounds of share transfers, disputed allotments, or founders who have since fallen out with one another, that history deserves the same diligence attention as the company's material contracts or its regulatory licences, and considerably more attention than it typically receives, because a defect discovered here does not merely delay a shareholder vote. It can, as Millicom discovered, freeze the entire transaction in litigation for years.

The material adverse change clause almost never does what people think it does.

Few provisions in a transaction agreement are negotiated with as much intensity, and understood with as little precision, as the material adverse change clause, the provision permitting a buyer to walk away from a signed agreement if something sufficiently damaging happens to the target

between signing and closing. The commercial purpose of the clause is narrower than its name suggests. It is not designed to protect a buyer against ordinary business fluctuation, a disappointing quarter, a shift in exchange rates, a downturn affecting the whole sector rather than the target specifically. The clause is designed to protect a buyer against a change so severe and so specific to the target that it goes to the fundamental basis on which the deal was priced, and the threshold courts actually apply to that question is considerably higher than most buyers assume when they insist on the clause during negotiation. A material adverse change provision that has never been tested against a genuine, target-specific catastrophe, rather than against the general economic conditions the buyer secretly hopes will justify an exit if the market turns, is a clause that exists mainly to be argued about rather than relied upon, and a seller who understands that distinction is in a considerably stronger position at the negotiating table than one who treats the clause as an ordinary item to be traded away for a marginally better price.

Negotiate the conditions with the same seriousness as the price.

What connects a regulatory approval, a third party consent, a shareholder vote, a financing condition and a material adverse change clause is that each one is, at bottom, a question about who bears a specific risk in the gap between signing and closing, and each one deserves exactly the negotiating intensity that price receives, because each one is, in its own way, a mechanism for protecting or eroding that price.

The lesson is that a closing condition can only do the work it was designed to do if the risk it addresses was genuinely investigated before the transaction was signed, rather than assumed away because investigating it properly would have taken time the parties did not think they had. The listing that never happened was not defeated by a clause. It was defeated by a question, who actually owns this company, that nobody had definitively answered before the process began, and that the closing condition, once triggered, could only expose rather than resolve. A dealmaker who spends as much diligence effort tracing the history behind a share register as negotiating the price attached to the shares on it is not being unusually cautious. They are treating the closing condition as what it actually is, the place where every risk left unresolved during negotiation eventually comes due.

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THE CHEAPEST INSURANCE ON A DEVELOPMENT PROJECT IS THE ONE ALMOST NOBODY BUYS

By the time the first villa at Matemwe stood three storeys high, the defect that would eventually halt the entire project had already existed, quietly and on paper, for the better part of four years.

There is a story that every Tanzanian property lawyer eventually tells, in one version or another, because it captures something that no amount of statutory summary ever quite manages to convey: that the moment a development project fails is almost never the moment at which its failure becomes visible. Consider the case of the Blue Amber Resort, a beach and residential development that a British developer named Brian Thomson, operating through a Mauritian registered company called Pennyroyal Limited, began building on four hundred and eleven hectares of leased land at Matemwe, on the northeastern coast of Unguja in Zanzibar. The scheme, when it was announced, carried a projected value of one point six billion United States dollars and promised, among other things, a private airstrip and thousands of luxury villas for a market of international buyers who had already begun placing deposits against units scheduled for delivery before the end of 2022. By the time construction was well underway, Pennyroyal had spent some fifty five million dollars turning drawings into concrete. And then, in January 2022, the Ministry responsible for Lands in Zanzibar terminated the underlying land lease, and in July of that same year the Zanzibar Investment Promotion Authority informed the developer that its building permit would not be renewed. What had, until that point, looked like an active and thriving construction site became, almost overnight, the subject of an international arbitration claim before the World Bank's dispute resolution tribunal, a claim that by some estimates could run into the hundreds of millions of dollars, and a cautionary tale that Zanzibar's own political leadership would later invoke when warning of the damage such disputes do to investor confidence.

What makes the Blue Amber story so instructive, and so uncomfortable, is not that a government changed its mind midway through a project, although that is one available reading of it. It is that reports from the litigation itself suggest the underlying lease had allegedly been affected by a court order dating back to 2018, years before the dispute over its termination became public, and long before Pennyroyal poured its first fifty five million dollars into the site. If that account is accurate, then the defect that eventually stopped the Blue Amber Resort in its tracks was not created in 2022 at all. It was sitting, dormant and largely invisible, in the paper underlying the project from a much earlier point, waiting for someone to notice it, and the tragedy of the story is not that it was noticed, but that it was noticed so late, after the money that could have absorbed the cost of resolving it cheaply had already been converted into concrete, steel and villas that could not simply be undone.

This is the pattern this article wants to describe, because it recurs with a regularity that ought to worry any developer, financier or board member with capital committed to Tanzanian real estate. A development project does not answer to a single regulator, and the temptation, when thinking about compliance, is to imagine the risk as a function of how many authorities must be satisfied: the office issuing the title, the planning authority granting consent, the council responsible for road reserves, the National Environment Management Council, the labour inspectorate, the board that licenses contractors.

It would be reasonable to assume that the developers who run into trouble are simply the ones who faced the longest list of approvals, or the most demanding regulators, or the least cooperative officials. The evidence, once you look closely at how these projects actually unravel, suggests something rather different and considerably more useful to know in advance. The developers who stall are rarely distinguished by how many gates stood between them and their building permit. They are distinguished by when, in the life of the project, each of those gates was actually closed, because every one of the obstacles this article is about to describe shares a single defining characteristic: it is inexpensive, often trivially so, to resolve while the project remains a set of drawings and a line in a financial model, and it becomes disproportionately, sometimes catastrophically, expensive to resolve once the project has been converted into a physical structure that people can see, that lenders have financed, and that purchasers have already paid deposits against.

The complexity is not the risk, the timing is.

1. Land: what a search would have told you in a day.

1.1. Land in Tanzania is not held as freehold in the way that a purchaser accustomed to other jurisdictions might expect. It is held as a right of occupancy under the Land Act, Cap. 113, and that right is granted subject to conditions that fix the permitted use of the land and frequently require it to be developed within a stated period of time. A right of occupancy granted for residential or agricultural purposes cannot simply be redeployed toward commercial or industrial development without securing a change of use from the Commissioner for Lands and the relevant planning authority, and a sustained breach of the conditions attached to the original grant exposes the holder to the risk of revocation, a risk that does not diminish merely because construction has already begun. None of this is difficult or expensive to establish in advance. A properly conducted search, undertaken before a single shilling is committed to the site, will tell a developer within a matter of days what use the land was actually granted for, and whether that use matches what the developer intends to build.

1.2. Ownership itself is also, more often than a confident seller's assurances would suggest, considerably less settled than it appears on the surface. Competing claims, boundary disputes, double allocations of the same parcel, unregistered interests, and claims rooted in family or customary tenure are common enough in the Tanzanian land market that no experienced practitioner treats a clean looking title as evidence that the title is actually clean.

1.3. A single caveat lodged against the register under the Land Registration Act, Cap. 334, is sufficient to freeze all dealings and all financing overnight, regardless of how far construction has progressed, and disputes of this kind are adjudicated before the District Land and Housing Tribunal, or before the Land Division of the High Court where the value of the claim is sufficiently high, under the Land Disputes Courts Act, Cap. 216. A pending land case does not merely inconvenience a project. It halts construction outright and it halts, alongside construction, any further disbursement a lender might otherwise have been prepared to make.

1.4. Two further traps recur often enough in practice to deserve specific mention. Land that remains, in law, village land under the Village Land Act, Cap. 114, and has never been formally converted into general land, cannot lawfully be developed as an urban plot, however urban the surrounding area may already appear to be. And land that has been gazetted or earmarked for a public purpose remains susceptible to compulsory acquisition under the Land Acquisition Act, Cap. 118, a possibility that a developer who has not checked the gazette notices may discover only when the acquisition itself arrives.

2. A permit is a signature, not a guarantee.

2.1. The building permit deserves a related but distinct kind of scrutiny, because developers have a natural and understandable tendency to treat the permit displayed at the site office as the conclusion of the enquiry into legality, when in fact it is closer to being the beginning of one.

2.2. Under the Urban Planning Act, No. 8 of 2007, every city, municipal, town and township council functions as the planning authority for its own area, and no land may lawfully be developed without that authority's consent, while the mechanics of the building permit itself are governed by the Urban Planning (Building) Regulations, 2018, published as Government Notice No. 80 of 2018. A permit is only as sound as the foundation of authority beneath it. The land use for which it was granted must actually correspond to the approved planning scheme; the plot itself must have been properly surveyed and titled; and the officer whose signature appears on the document must genuinely have possessed the authority to affix it.

2.3. None of these three conditions is visible simply from looking at the permit as a physical object, which is precisely what makes the Blue Amber pattern so dangerous and so easy to repeat. A permit issued over land whose zoning does not actually support the intended use, or issued without valid planning consent standing behind it, remains vulnerable to revocation or legal challenge for a period that can extend for years after the permit was originally granted, for a defect that existed before the permit was ever signed and that neither the developer nor, in many cases, the issuing officer, had any particular reason to notice at the time. The developer who has already built upon such a permit faces enforcement action, and in the most severe cases, an order to demolish what has been built, which is a fate the Blue Amber developers would likely recognise as more familiar than they would wish.

3. **The road reserve**

3.1 The road reserve operates according to the same underlying logic, though it tends to attract rather less attention until the demolition notices actually arrive. Under the Roads Act, Cap. 167 R.E. 2023, land situated within a road reserve is protected for the exclusive use envisaged by section 29(1) of that Act, and the erection of any structure within the reserve, absent the written permission of the relevant road authority, is prohibited outright, with an offending structure liable to be removed at the owner's own cost and without compensation.

3.2 In 2021, Tanzania's national roads agency announced plans to demolish hundreds of residential and commercial structures along a stretch of Morogoro Road between Kimara and Kibamba in Dar es Salaam, to make way for the expansion of that road into a six lane carriageway, and among the facilities identified for demolition were health centres, filling stations, and more than seven hundred residential and business premises whose owners had, in many cases, built and occupied their structures for years without any indication from the authorities that their position within the reserve would eventually become the ground on which their investment was undone. On the urban fringes of Tanzania's fastest growing cities, and along the corridors of its trunk roads, plot boundaries and road reserves overlap with a frequency that ought to concern any developer relying solely on a survey plan drawn years earlier, because a building that intrudes even partially into a reserve becomes a standing liability that no quality of construction can subsequently cure.

3.3 Establishing the reserve boundary and the required setback is a question that belongs at the design stage. Once the walls are already standing, it is no longer a design question at all. It is a demolition question, and the developers of Morogoro Road learned that distinction at considerable and largely avoidable cost.

4. **The environmental certificate**

4.1 The environmental certificate belongs in the same family of risk, although developers tend to experience it as a procedural formality rather than as the substantive gate that it actually is. Under the Environmental Management Act, Cap. 191 R.E. 2023, a project falling within the Third Schedule, a category broad enough to capture general projects out of character with their surroundings, projects involving a major change in land use, urban development schemes, waste management infrastructure, electrical infrastructure and transportation projects, must obtain an environmental impact assessment certificate before the project commences or is financed, pursuant to sections 81(1) and 81(2) of the Act. A single urban development can, in practice, trip more than one of these categories simultaneously, meaning the obligation to assess can attach several times over to what is, from the developer's perspective, a single site.

4.2 Commencing a scheduled project without the required certificate is an offence under section 81(4), and the practical consequences run considerably further than the penalty itself might suggest, because lenders' financing conditions typically collapse the moment the certificate's absence becomes apparent, and the legality of the project is compromised at what is, quite literally, its root. Screening, and the full assessment where it proves necessary, belongs at the very front of the project timeline, alongside the search on title and the enquiry into planning consent. Attempting to retrofit environmental compliance after construction has already commenced is, of the many ways a Tanzanian development project can invite a stop order, among the most reliable.

A second axis: who is allowed to do the work.

A separate and distinct category of risk concerns not whether the paper authorising the project was ever valid, but whether the people actually carrying out the construction were themselves eligible to do so, and this distinction matters because it is frequently overlooked by developers who have otherwise done careful work on their title and their permits.

A construction site is, in the eyes of the law, a workplace, and Tanzania's Occupational Health and Safety Act, Cap. 297 R.E. 2023, treats it accordingly. The owner or occupier of the site must register the workplace before operations begin, under section 16 of that Act, and must thereafter hold a compliance licence that requires renewal every twelve months. Operating an unregistered workplace is itself an offence under section 78(1), carrying a fine of between one and five million shillings, and beyond the statutory penalty, it exposes both the developer and the contractor to a stop work order and materially weakens the developer's insurance position should a

worker be injured on site, a possibility that Tanzania's construction sector has had painful reason to consider in recent years.

In 2013, a sixteen storey residential building under construction in Dar es Salaam collapsed, killing more than thirty people, most of them labourers on site and residents of a nearby neighbourhood, and the subsequent investigation pointed to substandard concrete and inadequate reinforcement rather than to a defect in the underlying paperwork. The tragedy is not, strictly speaking, a story about a missing permit or an unregistered workplace, but it belongs in this discussion nonetheless, because it illustrates precisely what happens when the discipline that ought to govern a construction site from the outset, whether that discipline concerns the soundness of the paper behind the project or the soundness of the concrete being poured, is treated as a formality to be caught up on rather than a condition to be satisfied before the work proceeds. The order that followed, requiring the demolition of a second, structurally similar building under construction by the same developer nearby, is a reminder that the cost of discovering a problem late is rarely confined to the site where the problem first became visible.

The contractor sits on this same axis of eligibility. Under the Contractors Registration Act, Cap. 235, a contractor must be registered in the correct class by the Contractors Registration Board, and engaging a contractor who is unregistered, or registered in the wrong class for the scale of works involved, is itself an offence capable of tainting the underlying works. Where public funds or a public private partnership structure are involved, the Public Procurement Act, 2023, adds a further and considerably less forgiving layer of process that cannot be shortcut retroactively once the works are already underway.

A recurring pattern in Tanzanian construction disputes involves the discovery, part way through a project, that the engaged contractor was never properly classed for the works being undertaken, a discovery that can render the engagement itself unlawful and leave the employer facing a defective works problem and a recovery problem at the same moment, which is a considerably worse position than facing either problem alone. None of this is an argument against engaging contractors, obviously. It is an argument for writing a construction contract, whether in the FIDIC form or in a bespoke agreement, that allocates the risk of every permit and every approval expressly between the parties, so that a delay arising at any single gate has a contractual home to live in, rather than becoming an open ended dispute that neither party quite knows how to resolve.

In practice, the disputes that follow from inadequate risk allocation cluster around a fairly predictable set of issues: claims for extension of time and the prolongation costs that follow delay, disagreements over the valuation of variations and additional scope, disputes over interim payment certificates and the withholding of retention money, defective or non conforming work and the cost of remedying it, and wrongful suspension or termination, where one party downs tools and the other treats that decision as repudiation of the contract altogether. Each of these categories of dispute is, at bottom, a question the contract should have answered in advance, concerning who bears the time and the cost of a particular risk, and how a disagreement about that allocation is to be resolved once it arises.

Why a stall costs more than a delay.

Where units in a development have already been sold off plan, a stalled project ceases to be a purely regulatory problem and becomes, almost instantly, a web of overlapping contractual liabilities running in parallel rather than in sequence. Off plan purchasers typically pay deposits and staged instalments against their sale agreements, and, in the case of apartments, against prospective unit titles under the Unit Titles Act, Cap. 416. If the development stalls, as the Blue Amber project's own purchasers discovered when the units they had been promised for delivery by December 2022 never materialised, those purchasers become entitled to allege breach of the underlying sale agreements, and to pursue rescission and refund of the sums already paid, frequently together with interest, or specific performance in cases where the project can still realistically be completed, or damages for the delay itself.

Where deposits have already been applied elsewhere within the developer's operations, or where units have been oversold relative to what the site can actually deliver, the developer's exposure widens beyond simple breach of contract into misrepresentation, and in the most serious cases, allegations of fraud. What makes this phase of the risk the most expensive of all, more expensive than any single claim considered on its own would suggest, is that the claims tend to arrive together rather than one after another. A developer facing a stalled site can find itself answering simultaneously to lenders, to contractors, and to purchasers, each pursuing a different legal basis and a different remedy, and a wave of purchaser litigation arriving at the same moment as a lender's demand for repayment can itself be the event that converts a merely delayed project into an insolvent one. The same paper defect that would have cost almost nothing to identify during an early title search now detonates, more or less simultaneously, across every contractual relationship the project touches.

Two further consequences deserve mention precisely because they rarely present themselves as a single dramatic event, and are therefore easy for a developer to underestimate while they are actually accumulating. The first is delayed revenue: a project that cannot open earns nothing while its costs continue to accrue, financing still has to be serviced whether or not the site is producing income, and the return on which the entire investment case was originally modelled erodes, quietly and continuously, with every month that passes.

The second is reputational, and it tends to outlast by a considerable margin the specific legal defect that originally caused the stall. In a market where developers depend heavily on lender confidence and on the willingness of purchasers to commit deposits against units that do not yet exist, a visibly stalled or disputed site signals risk to the entire market long after the underlying legal issue has actually been resolved, which is precisely the dynamic that Zanzibar's political leadership warned of when the Blue Amber dispute became public, cautioning that the episode could undermine the archipelago's broader ability to attract the kind of foreign investment its tourism economy depends on.

The insurance nobody buys.

What all of this suggests, taken together, is that Tanzanian developers are, in a sense, already accustomed to the logic of insurance, even if they would not necessarily describe their behaviour in those terms. They budget for contractor performance bonds. They set aside contingency reserves against cost overruns. They purchase professional indemnity cover for their architects and engineers. Each of these is, in substance, a form of insurance against a risk that is visible, quantifiable, and generally accepted within the industry as a legitimate cost of doing business.

What is considerably harder to find, in practice, is a developer who treats legal review of the title, the permits, and the underlying approvals, undertaken properly and completed before a single payment certificate is issued to the contractor, as belonging to that same category of insurance. More often, this kind of review is filed away under the heading of compliance, undertaken in parallel with the design process rather than ahead of it, and squeezed for time precisely when the project's timeline is tightest, which is, unfortunately, exactly the moment at which it matters most. And yet, on the evidence of Blue Amber, of Morogoro Road, and of the many smaller, less internationally reported disputes that never reach an arbitral tribunal but nonetheless cost their developers dearly, this is the cheapest insurance available anywhere in the entire lifecycle of a Tanzanian development project, precisely because the defect it is designed to catch is, almost without exception, cheaper to resolve the earlier it is found.

Directors, it is worth adding, carry a personal dimension of this exposure that goes beyond the commercial loss to the company itself. Under the Companies Act, Cap. 212, section 188, directors owe a duty of care, skill and diligence in the conduct of the company's affairs, and a director who signs off on a project breaking ground without its underlying approvals properly secured will find it difficult, after the fact, to characterise that decision as diligent, whatever assurances were offered at the site meeting where the decision was actually made.

The developers who do not stall, in the end, are not distinguished by having faced fewer regulators, or friendlier officials, or a simpler set of statutory requirements than everyone else. They are distinguished by having priced legal structuring the way they already price everything else that protects their eventual return: as a cost incurred early, deliberately, and before the money is irreversibly committed, rather than as paperwork to be caught up on once the machines are already running and the deposits have already been spent. On a Tanzanian development project, as the developers of Blue Amber Resort discovered at a cost that ran into tens of millions of dollars and years of international arbitration, it remains, without exception, cheaper to resolve the problem on paper than it will ever be to resolve it in concrete.

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IN ZANZIBAR, YOU DO NOT BUY LAND. YOU BUY ELIGIBILITY, AND MOST INVESTORS FIND THAT OUT TOO LATE

There is a common assumption among foreign investors that once the purchase price has been paid, the sale agreement signed and the transaction completed, ownership naturally follows.

In Zanzibar, that assumption can prove remarkably expensive. We have encountered transactions where an investor has paid the full purchase price for land, signed every required document and genuinely believed the acquisition was complete, only to discover that they can neither acquire the title nor a registrable interest in the property. The instinctive reaction is often to attribute the problem to fraud, poor legal advice or defective documentation.

More often than not, none of those explanations is correct. It is the system working exactly as designed, and it is not even a particularly unusual system by regional standards. What is unusual, once you compare it to its neighbours, is where Zanzibar has chosen to place the test an investor must pass, and how many separate authorities are entitled to fail them before that test is complete.

That is why land transactions in Zanzibar cannot be approached as ordinary commercial acquisitions. What the parties agree to buy and sell is only part of the story. Whether the legal framework is prepared to give effect to that agreement is what ultimately determines the value of the transaction.

Everyone in the neighbourhood does this, Zanzibar does it differently.

Land in Zanzibar is public land, vested in the President and held in trust for the people under the Land Tenure Act, Act No. 12 of 1992. Zanzibari citizens hold either customary occupancy on unsurveyed ancestral land, or a Right of Occupancy: a government lease, usually thirty-three years, renewable out to ninety-nine. Investors get the same category of right the citizens get. Occupation and use, granted by the state, on the state's terms. If that is all you knew, you would assume Zanzibar was unusually restrictive. It is not, particularly.

Kenya's Constitution caps any non-citizen's land interest at ninety-nine years and simply converts a foreign-held freehold down to that term by operation of law, no application required. Rwanda gives foreigners an emphyteutic lease, also capped at ninety-nine years since the 2021 reforms, with freehold reserved for citizens except by presidential order. Even Mauritius, which advertises freehold ownership to foreign buyers as a selling point, only offers that freehold inside government-approved developments. Buy land outside one of those schemes and the transaction is simply void.

So take the ownership restriction off the table, it is not what distinguishes Zanzibar from its neighbours. What distinguishes it is what an investor has to prove, to whom, and in what order, before the state will grant them anything at all.

Three regulators, no coordination, and nobody talking to each other.

The instinct of most investors is to treat the approval process as a sequence. Register the company, obtain the investment certificate, secure the sector licence, then finally acquire the land. Each approval is expected to move the transaction one step closer to completion. Zanzibar does not work that way.

The system is designed so that no single regulator ever decides whether a foreign investment should proceed. Instead, each institution is entrusted with a narrow statutory mandate, leaving the investment to be examined from several different perspectives before the Land Commission is prepared to recognise any interest in land.

BPRA, for example, is not concerned with the investment at all. Under Practice Directive No. 2 of 2025, its enquiry is limited to the company itself. Does it satisfy the minimum share capital requirement of TZS 100 million? Has it met the conditions for incorporation? Those questions are answered once, at the point of registration. They say remarkably little about whether the company is capable of undertaking the development it was formed to pursue.

ZIPA begins where BPRA stops. The Second Schedule to the Zanzibar Investment Act requires a foreign-owned or joint venture hotel or real estate project to demonstrate a minimum investment of approximately USD 2.5 million before it qualifies for an Investment Certificate. That threshold is often compared with BPRA's share capital requirement, but the comparison is misleading because the two regulators are not measuring the same thing. BPRA is testing the legal sufficiency of the corporate vehicle. ZIPA is testing the economic significance of the investment itself. A company may satisfy one with ease and fail the other completely.

The Zanzibar Commission for Tourism shifts the enquiry once again. Capital becomes secondary. Its concern is whether the proposed operator is capable of delivering tourism services at the standard expected of the sector. Operational competence, staffing, facilities and service standards become the focus. An investor may have sufficient capital, a qualifying investment and still fail to satisfy the regulator responsible for the industry in which the project will operate.

Looked at individually, each approval appears straightforward. Looked at collectively, something more interesting emerges. None of these institutions is validating the work of another. Each is protecting a different public interest. Company regulation, investment policy, tourism standards, land administration.
That distinction explains why foreign investors so often believe they are progressing through the system, only to discover that they have merely moved sideways within it. A BPRA certificate does not make a ZIPA certificate more likely. A ZIPA certificate does not guarantee a tourism licence. Until every regulator has independently answered the question Parliament assigned to it, the Land Commission remains unable to create the right the investor came to Zanzibar to acquire.

Where the money actually gets stuck

This is the part that costs people real time and real money, and it is not the part most cross-border teams are watching for. The instinct, trained by other markets, is to treat regulatory approval as something you run in parallel with financing and title work, once the deal is moving. That instinct works fine in Kenya, where the state shows up mostly after the fact. It works reasonably well in Rwanda, where one office handles the whole thing. It does not work in Zanzibar, where eligibility is not parallel to anything. It sits in front of the purchase, split across three offices that do not answer to each other, and none of it moves any faster because a deposit has already changed hands.

We have watched investors structure the acquiring entity only after the sale agreement is signed, then discover, months later, that the company as formed falls short of ZIPA's threshold for that particular project type, or was never going to qualify for a tourism licence given its shareholding. Fixing that is not a paperwork delay. It can run the clock out past the point where the seller, or the investor's own lenders, are still willing to hold the original terms.

There is a quieter cost too, one that rarely makes it onto anyone's checklist until it bites. Work and residence permit for foreign staff are not processed on their own; the immigration authorities want a recommendation letter from ZIPA or the tourism commission first. An investor who has not cleared the Investment Certificate stage can have a fully signed, fully paid project and still have no lawful way to put people on the ground to run it.

The one place Zanzibar has already built the Mauritius model, and chose to stop there

Under the Zanzibar Condominium Act, Act No. 10 of 2019, foreigners can buy condominium units in approved developments. Structurally, this is Mauritius in miniature: the screening happens once, at the project level, before units go to market. Buy a condominium unit and you are not personally satisfying BPRA, ZIPA, and the tourism commission. You are stepping into a structure the developer already qualified.

What is worth sitting with is that Zanzibar clearly knows how to build this. It just chose to build it for one category of investment and not the others. That reads less like an oversight the government has not gotten around to fixing, and more like a deliberate decision to keep its hand directly on who qualifies for the bigger categories, hotels, resorts, mixed-use development, even knowing that choice creates exactly the sequencing risk described above.

What we would actually tell a Board about this.

The useful takeaway is not "do more diligence," which is what every article like this says and which tells a board nothing they can act on. It is “change the order”. Before anyone touches title searches, boundary work, or the terms of the sale agreement, test the acquiring entity against BPRA's capital threshold, ZIPA's investment minimum for that specific project category, and the tourism licensing criteria if accommodation is involved. If the vehicle fails any of those as currently structured, the land-side diligence is largely academic. The deal cannot proceed regardless of how clean the title turns out to be.

If a board or investment committee is weighing Zanzibar against Kenya, Rwanda, or Mauritius for the same capital, the comparison should shape more than which country gets the money. It should shape how the team expects the deal to move. A team used to Rwanda's single office, or to Mauritius letting the developer carry the risk, will bring that same rhythm to a Zanzibar transaction without thinking about it, and it will cost them. Until Zanzibar builds its own version of the one-stop shop, that coordination is work the investor has to do themselves, and it has to happen before the seller is ever approached, not after.

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