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THE DETAILED PROCEDURE FOR OBTAINING THE RENTAL CONTRACT AND THE REGISTRATION CERTIFICATE IN CONGOLESE LAW IN THE PROVINCE OF TSHOPO IN DR Congo.

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ABSTRACT

In the context of this study, the major concern is to examine in the light of the regulatory texts the detailed procedure for obtaining the rental contract and the registration certificate for the benefit of the Congolese population, the majority of whom have led a precarious life in recent decades. In view of this glaring misery, some Congolese State agents who live under various hats become tramps in front of the applicants who frequent the land administration, which is already regulated.

Indeed, whatever the mediocre purchasing power and at the bottom of the global scale, the need to own a fund and build there for the Congolese population is no different from the populations living under other skies; which proves that the future of man is linked to that of the earth.

It is in this way that it has been demonstrated that the preponderant place of the earth in black Africa constitutes an indispensable good for the life of man, because it constitutes not only a source of life, an intermediary between men and divinities; but also, and above all a source of income (Guy ADJETTE GOUASSIGAN quoted by KOSSO WELO, 2005-2006, p. 1).

Hence, ignorance of the procedure for obtaining certain titles relating to the fund and real estate opens the door for Congolese predatory agents to enrich themselves at the expense of others; the enemy of the Congolese people being the Congolese himself is said (Congolese adage since the 1980s).

KEYWORDS: contract, rental, certificate, registration, law, tshopo.

INTRODUCTION

The procedure for the constitution and follow-up of a file in the cadastre is and remains until these days, a source of enrichment of agents and officials of the auxiliary services of the State in land and real estate matters who, in complicity or not with their hierarchical heads; multiply the range of maneuvers in order to discourage the personal follow-up of the file by the applicant who applies for any title from the registrar of real estate titles.

These administrative manoeuvres benefit the agents and their leaders who sometimes exceed the amounts to be paid for any service without showing the nomenclature of taxation because of the low level of education of many of the applicants and the non-support of these agents by the Congolese State, making them live under the hat of commissionaire.

Having noted that the detailed steps that must be followed by a file constituted and followed up in the cadastre remains the field of speculation, that it has been considered appropriate to exhume the possible details in the light of the public who has not passed through the National School of Cadastre and who suffers from the evils of ignorance of the land law by lack of popularization of the latter by the auxiliary services of the State in land and real estate matters because it is said "the one who lack of knowledge is half dead."

To carry out this contribution, we used the method of further investigation, then the exegetical method supported by documentation, documentary techniques, direct observation and free interviewing.

As conceived, this study has three essential points, namely:

- Clarification of concepts;
- The minimum content of the procedure for acquiring land;
- The detailed procedure for obtaining a rental contract and a certificate; of registration.

1. CLARIFICATION OF CONCEPTS

1.1. Contract

The contract is a title proving the right of enjoyment of the land and ownership of the buildings. Article 181 of the Land Law provides that: "the department responsible for land affairs shall apply the State policy on land use and distribution", i.e. the services of the Ministry of Land Affairs are competent to distribute and allocate land and to issue titles relating thereto.

Nevertheless, it should also be noted that in real estate matters, apart from the real estate titles department for the granting of registration certificates, the urban planning department also intervenes for the granting

of building permits and certificates of conformity.

Any person wishing to acquire a land and real estate title, must express his desire to obtain the title to the conservation of land and real estate titles which confers on him a right either of enjoyment on the fund, or a right of ownership on the immovable by incorporation (building) (KABEMBA K, 2016-2017, p.35).

1.2. THE RENTAL CONTRACT

The Land Law defines leasing as "a contract by which the State undertakes to make a person enjoy a piece of land and for a certain price that the latter undertakes to pay him (Article 144 of the Land Law).

This contract is awarded to a person who owns land that he has not developed, that is to say land not yet built. This contract cannot be granted for a term exceeding 3 years renewable 2 times for each renewal of 2 years. In principle, it is a preparatory contract for another concession that can be either ordinary or perpetual (VANDAMME B, 2020-2021, p.32).

This three-year period allows the tenant of the State to develop the land because the rental contract stipulates that "the tenant is required to occupy the leased plot in six months from the signing of the contract and to effectively begin its development within eighteen (18) months (Article 3 of the Congolese rental contract).

1.2.1. THE ORDINARY CONCESSION CONTRACT

The legislator has not defined the ordinary concession. But we only retain that this is a temporary contract, that is to say for a fixed term whose maximum term cannot exceed 25 years, this term is renewable.

The ordinary concession is granted only to natural persons of foreign nationality and legal persons (KABUYAYA B, 2017-2018; p.39).

1.2. 2 THE PERPETUAL CONCESSION CONTRACT

The Land Law defines the perpetual concession as a right that the State recognizes to a natural person of Congolese nationality to enjoy his fund indefinitely as long as the conditions of funds and form provided for by law are met (Article 80 of the Land Law).

In other words, a perpetual concession contract is a contract by which the State concludes only with natural persons of Congolese nationality.

1.3. CERTIFICATE OF REGISTRATION

The Congolese legislator has not defined the certificate of registration, Congolese jurisprudence and doctrine present it only from the point of view of the acquisition and transmission of immovable property.

This is why it is in the Belgian-French doctrine that paradoxically we will look for the elements of its definition.

Indeed, although they do not know the registration certificate in their land systems, Belgian and French law nevertheless know the institution of the certificate of ownership. This is an act by which a civil servant or public official certifies the existence of a right to a thing or a value (KABEMBA K, 2020-2021, p.32).

II. THE MINIMUM CONTENT OF THE LAND ACQUISITION PROCEDURE

2.1. Notions

2.1.1 Investigative, intervention and registration authorities

1 ° land authorities of receipt and examination of concession application

The Head of the Land Affairs Division for the City of Kinshasa and the Registrar of Real Estate Titles, in their respective jurisdictions, are, under article 13 (1) of the Ordinance on the Implementation of the Land Law, empowered to receive and investigate all applications for concessions. This article states that "... If the land requested for concession is located within the limits of the City of Kinshasa, the request is addressed to the Head of Land Division for the City of Kinshasa.

In addition, in other cases, the application is addressed to the Registrar of Real Estate Titles of the registration division in which the land is located.

Those officials, each as far as he is concerned, shall examine the requests addressed to them, forward them to the authorities responsible for the preliminary investigation procedure, draft concession contracts and, where appropriate, forward the draft contracts to the authorities responsible for signing them in accordance with the provisions of Article 14, if necessary, through the hierarchical channel.

Such officials shall receive such requests as representatives of all the conceding authorities. The examination of the application they must make consists of:

- ✓ To check whether all the legal conditions are met to grant the applicant the concession;
- ✓ To trigger the preliminary formalities if necessary (prior investigation, creation of plot, measurement and demarcation);
- ✓ To prepare the draft concession contract to be submitted to the signatory authority when all the legal conditions are met, and failing that; forward the request to the signatory authority for disposition, with a negative opinion, highlighting the possible illegality that would taint the contract.

The signatory authority must respond to the request for land addressed to it either positively (if it considers that the concession will be legal) or negatively; within 4 months of receipt of the request by its representative, under penalty of an administrative appeal before the hierarchical authority, then before the administrative judge if it were to prevail. Art 203 al 2 of the Land Law.

2°) The authorities involved in the land formalities prior to the concession

These are:

- ✓ The Minister of Land Affairs and the Provincial Governor with regard to decisions on the parcel plan of urban land, the designated agents of the cadastre for the demarcation, measurement and recording of places (Article 3 of the Ordinance of 1974 on measures for the implementation of the Land Law);
- ✓ The Administrator of the Territory, the Provincial Governor and the Public Prosecutor with regard to the investigation procedure prior to the concession of rural land. These interventions are imperative and decisive for the conclusion of the concession contract. They are in principle subject to administrative and judicial control for abuse or excess of power (Articles 193 to 2003 of the Land Law).

3°) The authority for the conservation of titles and registration of land concessions

The Registrar of Real Estate Titles is an official responsible for administering a registration district created and delimited by the President of the Republic, remains the only authority empowered to issue the registration certificate in his jurisdiction and this, after conclusion of the concession contract between the State and the concessionaire. However, only land concession contracts tending to confer emphyteutic, area, usufruct, use or perpetual land concession are followed by registration. Land rental and temporary occupation granted by the State cannot be the subject of the registration certificate (Arts 219 and 151).

Article 225 of the Land Law states in its first paragraph that " *the registration certificate shall be drawn up in duplicate, it shall be dated, sealed and signed by the Registrar* ".

It should be noted that the registration certificate is an autonomous legal act distinct from the concession contract under which it is drawn up. It is subject to its own conditions of legality for its validity on pain of nullity, which must be ordered by the judge of the judicial order (within 30 years, for the main action or for life, in case of exception).

It must, however, be reiterated that the registration certificate although being the definitive title of the right of use of the land in DR Congo, it can only be established, for the first time for a fund, after signature

of the concession contract (proper) by the conceding authority otherwise; the certificate to be intervened will be a simple paper to be cancelled at any time by the judge. Thus, it is important to know the competent authority to sign and validate a land concession contract, in DR Congo.

2.1.2. The signatory and validation authorities of the land concession contract

In principle, with regard to the provisions of Article 183 of the Land Law and Article 14 of the aforementioned Ordinance; two authorities have the authority to sign the concession contract, alone or with hierarchical approval, as the case may be. They are the Minister of Land Affairs and the Provincial Governor.

1°. **The Minister of Land Affairs:** is competent to sign:

- ✓ concession contracts for rural land of 2000 Ha or more, and urban land of 100 Ha or more, with *the approval of the law*.
- ✓ It is also competent to sign the concession contract for rural land from more than 1000 Ha to less than 2000 Ha and urban land from more than 50 Ha to less than 100 Ha, with validation by the Ordinance of the President of the Republic.
- ✓ Finally, it alone is competent to sign the concession contract for urban land in the city of Kinshasa less than or equal to 50 Ha as well as rural land in Kinshasa which is less than or equal to 200 Ha.

2°. **The Provincial Governor** is competent to sign:

- ✓ the concession contract for rural land of more than 200 Ha to 1000 Ha and urban land of more than 10 to 50 Ha, with validation (of the contract) by the Order of the Minister of Land Affairs.
- ✓ It alone is competent to sign the concession contract for rural land less than or equal to 200 Ha and urban land less than or equal to 10 Ha.

Exceptionally, and, if they want; the Minister and the Governor may (they have the right) delegate their power, for small areas of land, the first, to the Head of Land Division in respect of the city of Kinshasa and the second, to the Registrar of Real Estate Titles, in his province.

3°. **The Head of Land Divisions**, for the city of Kinshasa may be delegated by the Minister to conclude (sign) concession contracts for Kinshasa lands less than or equal to 2 Ha.

4°. **The Registrar of Real Estate Titles** may be delegated by the Provincial Governor to conclude or sign the concession contract for rural land of less than 10 Ha and urban land of less than 50 ares.

2.2. URBAN LAND TENURE

2.2.1. Formalities and prerequisites for the concession of urban land

A. The parcel plan and the supply of urban land on the market

These mandatory formalities prior to the granting of urban land result from the provisions of Article 63 of the Land Law and Articles 3, 4 and 5 of the Ord. No. 74-148 of 2 July 1974 on measures to implement the Land Law. Successively, these articles provide as follows:

- ✓ For localities erected as urban districts, the President of the Republic or his delegate has drawn up a parcel plan of the land to be granted.
- ✓ The Provincial Governor, in the region he administers, and, for the City of Kinshasa, the State Commissioner, are delegated to draw up plot plans of the land to be granted in urban districts.
- ✓ The land to be granted is offered to the public by an Order of the State Commissioner or the Regional Commissioner according to the distinction established in the previous article (art. 4 of the Ord. of 1974). The Order indicates for each parcel placed on the market: the cadastral number, the area, the destination, the conditions of development as well as the other special conditions if applicable. It refers to an annex plan on which the State Commissioner or the Regional Commissioner precedes his signature with the words "Seen and approved to be annexed to Order No. ..."
- ✓ Land that is not part of a parcel plan drawn up in accordance with the preceding provisions may be placed on the market and granted only by a Special Order of the State Commissioner or the Regional Commissioner according to the distinction established in Article 3 (Art. 5 of the Ord. of 1974).

It follows from these provisions that the competent land authority may validly conclude a concession contract on urban land only after the decisions of the Governor (in the provinces) or the Minister of Land Affairs (for the city of Kinshasa) on the parcel plan and the one offering these plots on the market. The parcel plan, otherwise called subdivision, is the division (on paper and on land), of a site or district into several plots intended to be built.

To serve as a basis for the land concession, the parcel plan must be drawn up by the Provincial Governor or by the Minister depending on whether it is the city of Kinshasa or the province. This does not mean that the Minister or the Governor must draw up the plan himself, he can be assisted by the local authority and/or the technical services (conservation of real estate titles, cadastre, urban planning), but in any case, this plan will only become the basis of land concession contracts when it is seen, approved and signed by him to be annexed to his decree offering these lands on the market. . The purpose of the latter decree is to

inform the public of the availability of urban land to be granted and the special conditions of these concessions. It thus gives everyone the opportunity to acquire them under the conditions set by law, regulations and the said decree.

If the urban land requested for concession is not part of any parcel plan signed, seen and approved by the governor (or the minister), the contract is only possible if the governor (in the provinces) or the minister (for the city of Kinshasa) makes a special order creating this plot and placing it on the market. In the absence of this formality, any urban land concession contract entered into is illegal and therefore voidable by the judge.

Thus, a parcel plan drawn up by a local authority (Mayor of the city, Mayor, Head of City or Administrator of the territory.) or by the technical authority (the Conservator, the Head of Division of the Cadastre, Urban Planning, ...) but not approved and not signed by the Provincial Governor (or the Minister for the city of Kinshasa) cannot serve as a basis for the concession, on pain of nullity for violation of Article 63 of the Land Law and its implementing measures.

In addition, it is not enough that the urban land requested is part of a parcel plan approved and signed by the Governor (or by the Minister for the city of Kinshasa), it is also necessary that this land be offered on the market by the order of the same authority, otherwise the concession contract is voidable for violation of articles 4 and 5 of the ordinance on measures to implement the land law. This competence to parcel and remove urban land on the market is distinct from the concession power of the same authorities.

Therefore, the signing of a concession contract by the Governor or by the Minister does not cover the defect of the lack of a parcel plan and the supply of land on the market. This power of parcel plan and supply of land on the market, is subject to legality and administrative control. Thus, in the absence of a special text authorizing it, the governor or the minister cannot delegate this power to draw up a parcel plan and offer land on the market, either to the conservator or to the head of the land division, as the case may be.

1. THE DETAILED PROCEDURE FOR OBTAINING THE RENTAL CONTRACT AND THE REGISTRATION CERTIFICATE (KATEMBO S, 2012-2013, p.23)

Any application for a land grant must be addressed to the registrar of land titles of the place where the land requested is located.

To apply for land, it is necessary that:

- ❖ The land application is sent (two copies) to the registrar of land titles of the electoral district by registered mail and with acknowledgment of receipt. It will be sent to the domain office (annotation of the Registrar of Real Estate Titles after opening the file);
- ❖ The office of the domain establishes and signs a request for the work to be carried out by the cadastre service while naming a number of the request and specifying the nature of the work (annotation of the head of office);
- ❖ The head of the technical office or the head of division himself shall draw up a mission order in two copies, one fixed and the other mobile and forward the file to the technical office after registration with the secretariat of the head of division;
- ❖ The head of office gives the visa for the descent of the technicians in the field and his secretariat records the mission order, assigns the number and keeps a copy (annotation of the head of office);
- ❖ The technicians go down to the field (equipped with the mobile mission order) and the surveyor draws up the following documents: - three to five PV of measurement and demarcation
 - Three to five prints of sketches to the contract
 - Three to five minutes of place report,

The minutes of measurement and demarcation are countersigned by the surveyor and the applicant (agreement of the owner) and the minutes of the report of place are signed by the surveyor or surveyor;

- The situation sketch;
 - The sketch sided freehand;
 - Spreadsheets
- ❖ The file thus constituted is transmitted to the technical office via its secretariat for the verification of the coordinates and technical data of the cadastre provided (annotation of the head of office ex: ok for the verification);
 - ❖ The file is sent to the head of division who initials the sketches and countersigns the minutes of the place report and transmits the file to the documentation (the plot was previously codified);
 - ❖ The documentation office checks the sketch in the light of the existing plan and the head of office draws up a parcel sheet, gives the numbers of the PVs, creates a cadastral farde and separates the cadastral file and transmits the parent file to the conservation of land and real estate titles;
 - ❖ The curator authorizes the calculations and sends the file to the tax office which in turn sends the file to the domain office;
 - ❖ The estate office initiates a draft rental contract, the contract itself and the letter inviting the applicant to pay the fees, draws up the decree creating the plot and introduces the file to the conservation of land and real estate titles;

- ❖ The curator signs the draft contract (first signature) and his secretariat forwards the file to the tax office which draws up the collection note of the DGRAD (and DGRPT);
- ❖ The applicant pays the fees to the bank and provides proof of payment, signs the contract;
- ❖ The file is sent to the accountant for the verification of the authenticity of the proof of payment and signs the expense report, the bank document and the rental contract;
- ❖ It is then that the curator signs the lease agreement (we speak of the second signature) and the file is sent to the office of the domain for the intervention and a copy is sent to the concessionaire;
- ❖ The head of the domain office draws up a parcel sheet called an intervention sheet containing the following elements:
 - 1) Cadastral number of the plot and contract;
 - 2) The area and price per square meter;
 - 3) The identity of the applicant;
 - 4) The date of intervention;
 - 5) The duration of the lease;
 - 6) The current date of taking;
 - 7) The expiration date.

The contract has just been registered and the DRC acknowledges at this time to have signed a rental contract with a third person and the service will later note the development.

These steps to be followed are to be observed with rigor; however, the organization of each office in the spirit of improving the quality of service in order to stifle the maneuvers of appropriation of funds can modify it.

The lease contract in its third article states: "the tenant is required to occupy the leased plot within six months from the signing of this contract, to effectively begin the development of it from eighteen months of the conclusion of this lease. The development must comply with the purpose of the land and the aesthetic urban standards of safety and hygiene provided for by the legislation and regulations in these matters.

This contract begins on (mention of the date of taking in progress), it follows the request for land of (mention of the date of establishment of the land application by the applicant); the development carried out on the plot having been deemed to comply with the standards imposed by the legal and regulatory provisions".

At the end of our work on the detailed procedure for obtaining the rental contract and the registration certificate for urban and rural land, we must say that the Congolese legislator had already regulated this procedure in Law No. 73-021 on the general regime of property, land and real estate regime and security

regime of July 1973 in articles 1189 to 203. Obtaining these documents allows the holder to have the following benefits:

- ❖ Application for a building permit or building permit from the Urban Planning Department, the basis of which is Article 3 of the rental contract;
- ❖ The acquisition of the building permit or the building permit from the Urban Planning Department after a favourable opinion of the technical analysis team;
- ❖ Compliance control by the technical analysis team;
- ❖ The granting of the certificate of conformity by the Urban Planning Department whose foundation is Article 2 of the perpetual concession contract;
- ❖ Statement of development by the surveyors of the cadastre that is to say that one fifth of the area of the plot is covered by the constructions of durable or semi-durable materials according to article sixth of the said contract and a tenth according to the article one hundred and fifty seventh paragraph "a" of the Land Law as supplemented by the article one hundred and sixty second paragraph 2.
- ❖ The signing of the concession contract either ordinary or perpetual, as the case may be, by the competent authority;
- ❖ The registrar draws up a registration certificate which will eventually be signed by the registrar and sent to the person concerned.

CONCLUSION

At the end of our study, which focused on the detailed procedure for obtaining a rental contract and a registration certificate in Congolese law, a subject already regulated, we focused our study on the administrative and legal procedure of obtaining certain titles including the rental contract, the registration certificate of perpetual and ordinary concession contract.

The lease contract is a first title that relates to a granted fund that the Congolese State grants to the concessionaire. This contract is duly signed by the Republic, the tenant and the accountant.

For the certificate of registration of a perpetual concession contract, ordinarily the procedure is different from that of the rental contract. Indeed, for a plot or concession with a contract, it is necessary a sufficient development, that is to say the area or the part built, must be greater than the unbuilt part.

A lack of adequate planning eats away at the Congolese cadastre and hinders the distributive and rational possibilities for the benefit of the entire population as maintained by the Congolese Land Law in this term: unless derogation granted by the competent authority and motivated by the importance of the investment envisaged, no one can hold a concession relating to an uncultivated land, if the other lands of the same destination that it holds in the same city or area have not been sufficiently developed in accordance with

the conditions and deadlines imposed by the legal and regulatory provisions (Article 67 of the Land Law).

Since planning is the domain of economic science, it is based on the same principle of scarcity of resources, the choice of objectives and the use of these resources to meet economic needs (BWAMA, planning, preparation, and evaluation of agricultural projects, 2006).

In view of the above, the Congolese land and tax cadastre being the basis of all kinds of cadastre in the Democratic Republic of the Congo deserves countercyclical planning to stimulate domestic demand and counteract the cyclical evolution of obtaining concessions by an autonomous wrist of the applicants, including the agents and officials of the auxiliary services of the State in land and real estate matters.

The services of the public administration must undergo a development plan implementation that begins with the creation of a favorable socio-economic climate by reducing the excessive intervention of the administration.

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