Institute of Economic Affairs

# Property Rights Regime in Kenya: Implications for Small Businesses

By:

David Owiro

IEA Research Paper

# Property Rights Regime in Kenya: Implications for Small Businesses

By: **David Owiro**

February 2014

Institute of Economic Affairs

**Published by**
Institute of Economic Affairs
With the support of the Center for International Private Enterprise


5th Floor, ACK Garden House
1st Ngong Avenue
P.O. Box 53989 - 00200
Nairobi, Kenya
Tel:+254-20-2721262,2717402
Fax:+254-20-2716231
Cell:+254-724-256510,733-272126
Email:admin@ieakenya.or.ke
Website:www.ieakenya.or.ke

**ISBN No. 978-9966-1561-7-4**

**Design & Layout**
Oscar Ochieng

# Table of Content

# 1.0. Introduction

Small businesses or enterprises access commercial property in a number of ways, each of which is determined by various factors, for instance their awareness about how the process works or the set of legal procedures that the law requires them to follow. In Kenya, the difficulties faced by small businesses in the property access process are neither well known nor well understood, particularly the precise experiences or challenges these businesses face apart from the high-level policy issues that might exist in the area of property rights protection and enforcement. Understanding these experiences will highlight the implications of the existing property rights regime and therefore help identify the immediate reform priority in the sector.

Small businesses, as tenants, also face challenges when it comes to property rights protection and enforcement in their commercial spaces. Understanding the kind of arrangements made with the landlords and owners of the commercial spaces will highlight the nature and terms of those agreements and help identify how they influence business growth and performance.

This paper provides the summary findings and recommendations of the survey of small enterprises conducted by the Institute of Economic Affairs (IEA) in the summer of 2013 in the Central Business District (CBD) of Nairobi, Kenya, covering about 125 small enterprises engaged in varying business endeavours such as selling mobile phone accessories, hair salons, restaurants, clothing outlets, boutiques and so on. Small enterprises are considered to be businesses that are either run by their owners or businesses that have one to two employees.

This survey is therefore intended to provide answers to some of these questions, and more importantly to determine the implications of the property rights regime on small enterprises in Kenya.

[1]Authored with the research assistance of Georges Poquillon

Following this introduction, this paper details the methodology used in the survey and highlights the legal and institutional frameworks surrounding property rights. The final sections discuss the survey's findings and make specific policy recommendations.

## 2.0 Methodology

The study was delivered in three distinct steps, the first being a literature review of all relevant documents including government policies and strategies. This was followed by conducting the survey in the Nairobi Central Business District. The final stage was analyzing the results and drafting the research paper. These steps are elaborated in the sections below.

### 2.1. Literature review

IEA conducted a critical assessment of existing relevant journal documents, government policies and strategies, as well as other relevant documents. The literature review was important especially in determining the legal and institutional framework as well as identifying the challenges of accessing property rights for small businesses.

### 2.2. Survey method

The study's aim was to reach between 70 and 100 respondents from small enterprises based in Nairobi who exhibit the key characteristics of renting commercial space in Mall-type exhibition halls in the CBD. Cluster sampling method was utilized in selecting the sample because of the difficulty in getting a complete list of the entire population members, and also Random sampling would produce a list of subjects so widely scattered that surveying them would prove to be far too expensive.

Cluster sampling was also useful because the population is too widely distributed geographically and we detected that these particular mall type exhibitions were common in certain locations within the CBD implying that perhaps this occurrence was a natural cluster. This particular technique is also suitable because most of the variation that exists in the population is within the group and not between them.

*Semi-Structured Questionnaires*

A semi-structured questionnaire, included in the annex of this report, was developed for the purposes of conducting the interviews to allow for both specific responses from the respondents as well as open-ended questions. This method was determined to be the most useful as it best captures small business owners' individual perception of how the law applies to them. The questionnaires were then administered by IEA enumerators.

*One-on-one interviews*

The questionnaires were administered through one-on-one interviews, with the enumerators filling them out personally. This allowed for consistency in the type of information that was collected from the respondents, as well as provided the interviewers with the opportunity to obtain clarification and additional information from the interviewees.

*Limitations*

The survey method does not allow for an extensive use of quantitative analysis mainly because of the qualitative nature of the information collected. Also, some of the sections are open ended and have a degree of variation in the responses and therefore do not allow for easy computation. Lastly, although overall the survey managed to interview 125 respondents, the number of responses to individual questions varied from 103 to 125. However, this variation was controlled for in the analysis that IEA performed and the end results and conclusions remain valid.

## 3.0. Legal and Institutional Framework

The legal and institutional framework comprises the enacted laws and legislation, as well as institutions that govern property rights protection and enforcement, and in particular those that have a significant impact on the operating environment of small businesses. This section will briefly highlight the most important aspects of this framework in Kenya.

## 3.1. Constitution of Kenya

One of the most fundamental laws is the new Kenyan constitution, promulgated in 2010. It suggests a number of reforms in the way property rights are enforced and protected. It proposes to alter the way land administration and management is carried out in the country through the enactment of the land laws, which were finally enacted in 2012.

- **The Lands Act:** This law defines the administration and management of land in the country. It also defines the classification of land.

- **Land Registration Act:** This law defines the process of land registration as well as providing for decentralization and devolution of land management and registration.

- **The National Land Commission Act:** This act establishes the National Land Commission and its functions.

- **Community Land Bill:** This act defines the administration and management of community land in the country. Although this is yet to be legislated, it is a specified law under the constitution 2010, and it is scheduled to be enacted in 2014.

## 3.2. National Land Policy

The National Land Policy aims to promote the efficient, sustainable and equitable use of land to achieve prosperity while ensuring it is protected for the needs of the future generations. Its main objective is to provide a national framework of policies and laws that provide all citizens with opportunity to access, occupy and benefit from land; an economic, socially equitable, and environmentally sustainable allocation and use of land; efficient transparent land dispute resolution mechanisms, and other functions.

## 3.3. Institutions

### Ministry of Lands

The Ministry is the main policy making body of the land and property sector and is also in charge of the land registry. The key role of managing of state and trust land was given to the National Land Commission by the new constitution and subsequently enacted in law. Management of the land registry still remains a contentious issue, as this had previously been the main source of corrupt practices.

### National Land Commission

The National Land Commission was established by the National Land Commission Act of 2012. Its functions are to manage public land on behalf of the national and county governments, to recommend a national land policy to the national government, and other functions.

### Judiciary

The judiciary plays a very important role in enforcement of property rights when it comes to dispute resolution, apart from other Alternative Dispute Resolution Mechanisms (ADRM), such as mediation, arbitration and others. The on-going judicial reforms are important in enhancing property rights protection and enforcement in the country because the lack of independent and impartial judicial system has contributed to massive corruption in the land administration and management. In particular, the establishment of the Environment and Land Court in 2011, as envisaged by the constitution, will help ease the heavy backlogs in the judicial system when it comes to settlement of disputes.

### County Governments

The constitution also provided for devolution of land administration and management to the newly created 47 county governments. This plays an important role in bringing these services closer to citizens at the county level. The law has established County Land Management Boards (CLMB) which will essentially play the role of land administration and management at the county level, including surveying and adjudication, among other duties.

# 4.0. IEA Research Findings

*Business Characteristics*

The first part of IEA's questionnaire asked the surveyed individuals about the characteristics of their business. Of the businesses surveyed, 85% are sole proprietorships, 13% partnerships and 2% are limited companies.

Owner-operated businesses account for 56% of the sample; the remaining 44% are operated by employees.

Of the businesses surveyed, 71% operate from one location, 17% from two locations and 12% from more than two locations.

Regarding employment, 52% of the respondents have at least two employees, with 48% being either owner operated or having one employee.

As revenue is a sensitive question respondents are reluctant to answer, data on earnings contains many missing values, preventing IEA from a precise analysis of business performances. However, taking measurement errors into account, it appears that the monthly revenue of at least 51% of the businesses is less than Ksh 10,000.

Only 25% of the respondents reported having completed the whole registration process, leaving a large majority of the businesses informal. The main reason mentioned for not being registered is the required use of trading license (55%) issued by the city council; followed by the lack of awareness (19%) and the costs incurred by the registration process (17%). The use of trading license is an ill-defined concept as these licenses allow individuals to perform business activities but do not resolve the issue of taxation, which only depends on registration. Hence, businesses using trade licences are in a legal limbo: on the one hand they are authorized to trade by the city council but on the other hand they remain illegal according to the tax registration system.

Assuming that the number of employees, the number of different locations and the monthly revenue are relevant proxies for business performance, cross-percentages show that registered businesses tend to perform better than their informal counterparts. Indeed, it appears that 40% of registered businesses have more than one location and 63% have more than one employee (versus 26% and 47%, respectively, for non-registered businesses). The revenue analysis corroborates this trend since, after having corrected for measurement error, a higher proportion of non-registered business lies below the Ksh 10,000 monthly revenue line. However, as it has been stated in the introduction to this section, one cannot infer about any impact of registration of business performance but only observe that, on average, registered business seem to be more successful.

### *Property Rights of Business Tenants*

Section 3 of the questionnaire focuses on property rights of businesses that rent their operating space, i.e. where intermediary individual accessed property from, what the procedure was, and what both the landlord and the tenant agreed on. Secure property rights, including tenants' rights, are of major interest as a large literature emphasized the link between property rights and success or failure of entrepreneurship.

Four different means of accessing property are distinguished in IEA's study, depending on whether the respondent: 1) used services of a licensed property agent, 2) used services of an informal or unlicensed property agent, 3) relied on acquaintances, or 4) found out about a specific commercial space through advertisement. The 103 businesses that indicated how they accessed property are divided up as follows: 45% used an informal agent, 29% went through acquaintances to find a third party rental, 21% hired a licensed property agent, and 5% accessed property through advertisement.

When comparing these four categories with the legal status of business registration, the proportion of legal business registrations is much higher when the access to property was gained though a licensed agent than through an informal agent (50% vs. 11% of 103 respondents).

Even if, as mentioned already, causal links cannot be properly identified, this gap in proportion of registrations could stem from a background differential. Informal agents are likely to appear as more accessible and affordable for individuals from modest social background, despite the fact that such belief is not evidence-based and results mainly from a misconception since licensed agents' fees are regulated by law, unlike those of their informal counterparts.

Being registered implies paying taxes, which is a burden on business operators; nonetheless, registration for tax purposes has its benefits such as accessing formal markets as well as having opportunities to recruit more qualified employees. Moreover, registration acts as insurance against the risk of business suspension by government agencies and inspectors. However, tax registration requires performing well enough to cover the costs incurred, and it is less attractive for the unregistered businesses.

The proportion of registered businesses that used a licensed agent stood at 50% followed by 37% who used acquaintances and 11% who used informal agents.

On the whole, the fact that only 21% of the businesses surveyed used a licensed agent to access property leads us to infer that to a large extent tenancy arrangements rely heavily on informal dealings.

All the respondents reported having incurred various costs to access property. The two main payments mentioned by the surveyed individuals are deposit fees (92%) and goodwill (67%). The deposit is a refundable amount based on the monthly rent to be paid in order to access the property (often two or three months' worth) , while what is termed as "goodwill" is money paid to the previous occupant separate from what is paid to the owner of the business premise. Goodwill is meant to compensate the previous business owner for the intangible established reputation in cases where the new owner is continuing with the same business.

It is interesting to notice that when 63% of the respondents who relied on either licensed or informal property agents were asked to pay goodwill; this figure rises to 77% for those who accessed property from acquaintances. On the other hand, while hiring an informal agent induces paying deposit fees in 98% of the cases, the percentage drops to 86% for users of licensed agents. Therefore, one might infer that the costs of accessing the property/ tenancy are significantly lower when licensed agents are used.

In terms of issuing legal documents confirming the tenancy arrangements, 57% of the respondents have a lease agreement; in some of the cases they are non-written verbal agreements with clear terms. Most of the respondents indicated that they are free to vacate the premises at will without issuing any notice. The agreements also tended to favour the landlord over the tenant implying that, in majority of the cases, the lease agreements that exist do not offer any protection to the tenant. However, it is important to note that individuals who accessed property from the intermediary of licensed agents are on average more likely to be provided with legal documents.

What is more, IEA's questionnaire examined service provision and dispute resolution as important aspects of tenants' property rights. Only a small part of the individuals surveyed (14%) experienced conflicts with their landlord, yet 88% of the disputes were solved out of court. The information in the data set does not specify whether this low use of official justice is due to a lack of awareness or due to distrust in judicial institutions.

### *Access to Credit and Other Major Constraints*

The last part of the study investigates to what extent interviewed businesspeople required credit to start their business and what main hurdles they encountered.

When asked whether they required credit to set up their business, 56% of the 112 respondents to this question answered in the affirmative. The use of credit is higher among those who relied on property agents, both licensed and informal, than among those who relied on acquaintances (60% versus 44%). One explanation could be that property agents also act as credit providers or credit facilitators, or because acquaintances provide other advantages such as lower lease costs that reduce the need for credit.

The fact individuals who accessed property through acquaintances are more likely to report having enough savings to cover their set-up costs supports the latter hypothesis.

Around 60% of the respondents identify high interest rates and lack of collateral as the major challenges to obtaining credit. Both of these hindrances emphasize the inefficiencies of the loan market when it comes to MSE; mainly channeled by the blurred definition of "MSE" that confuses microfinance institutions and by the reluctance of credit providers to accept property documents as collateral. The latter point is of particular interest since, while most of the surveyed businesses do hold legal property documents, these property titles do not seem to provide sufficient guarantees as to their reliability in the eyes of the financial institutions.

The respondents identified major constraints facing their businesses with regard to property rights enforcement as being one-sided terms of agreement that favour the landlord that offer no protection for the tenants. Other constraints cited were unfair competition, harassment by council workers, and power failures. The respondents also cited illegal hawkers who setup in front of their premises, whom the city council permits to trade, as well as substandard and counterfeit goods which enter the market at significantly lower prices.

## 5.0. Recommendations

From the survey findings small businesses in Nairobi certainly face quite a number of challenges that make it difficult to operate. These challenges inadvertently affect MSEs adversely relative to other larger enterprises, owing to larger enterprises having a significantly greater ability to cope with certain challenges because of the scale of their operations. It is therefore important to consider what policy recommendations we can draw to improve the business environment for MSEs, particularly with regard to enhancing the property rights regime. Below we consider some of these recommendations based on the findings.

## 5.1. Harmonize business registration processes and regimes

Businesses are required to register for a trading license, which is renewed annually, from the county council, as well as register for turnover tax if their annual revenue is less than KES 5,000,000. Based on the observations above, the majority of small business owners in Nairobi have registered only for the trading license and not the turnover tax, leaving them as informal enterprises. This stems from the fact that for one to be issued a trading license there is no requirement for proof of registration with the tax authority. The implication is that the majority of small business owners cannot access certain markets as they are deemed informal and the state continues to lose much needed revenue. Harmonizing these two regimes, namely the revenue-raising efforts of the county councils and the national taxation systems, will enhance formalization and therefore result in expanding market reach for MSEs.

## 5.2. Enact policies that enhance formalization of businesses

From the observations above we can conclude that enterprises that are registered generally record higher performance than enterprises which are not registered, as measured by the number of employees, the number of store fronts/branches, and the average monthly revenue. In this case, we make three assumptions. Firstly, the higher the number of employees an enterprise has, the more successful it is. Secondly, the more store locations an enterprise has, the more successful it is. Lastly, the higher the average monthly revenue reported, the higher its economic performance. Therefore, policies that enhance registration and encourage formalization of enterprises will not only benefit the state through more tax revenue, but also enhance the businesses' own efforts towards survival in a competitive world.

## 5.3. Enforce the requirement of licensing for estate agents to reduce costs of accessing property

Using a licensed agent significantly reduces the costs of accessing tenancy. There are two specific costs that are incurred when accessing commercial property. The first is goodwill, which is almost arbitrarily and subjectively determined and paid to the previous tenant leaving the premises. The second is the deposit, which is a substantial amount, equivalent to several months rent, paid to the owner/agent of the premises. These costs are a major hindrance to access to property as they are sometimes abnormally high, especially for the street-front commercial spaces.

The findings show that hiring an informal agent induces paying deposit fees in 98% of the cases. The percentage drops to 86% for property accessed through licensed agents.

## 5.4. Enhance awareness of tenant rights

The low level of awareness is a major reason for the poor utilization of lease agreements. Many respondents indicated that they were not aware of their rights and therefore could not participate effectively in the negotiation of their lease agreements. Further, they indicated a reluctance to demand for a written lease document as landlords would view them as trouble makers. Educating tenants about their rights would help them make more informed rental decisions and better protect the terms of their rental.

# 6.0. Conclusion

From the survey it is clear that the low level of awareness regarding property rights by MSEs negatively affects the use of lease agreements resulting in abuse of tenant rights. A comprehensive intervention would therefore have to involve sensitization and public awareness campaigns to improve understanding on the issues.

Secondly, majority of MSEs use informal agents to access property, which in turn leads to significantly higher costs in terms of goodwill and deposit. Therefore there is need for greater enforcement of the relevant sections of the Estate Agents Act that requires licensing for estate agents in order to instill professionalism and consistency in the sector.

Thirdly, MSEs performance is shown to be significantly better when the formal processes are followed. Registered MSEs that use licensed agents are more likely to have lease agreements that offer them tenancy protection and are much more revenue efficient.

Lastly, access to credit is still a major challenge when it comes to collateral requirements. Lease agreements when well structured could constitute legal documents that may be used as collateral. Therefore, encouraging the use of lease agreements might bring stability to the sector and as a result be recognized by the banking sector as alternative collateral for businesses requiring credit, hence enhancing access to credit for small businesses.

Overall, this survey has highlighted weaknesses that range from regulatory enforcement issues to concerns around policy design that have negative impact on MSEs. These have implications on both the county governments as well as the national government. On the one hand, it is in the interest of the county governments, such as Nairobi, to address these concerns. Failure to do so worsens the operating environment and thus stifles the growth of MSEs, resulting in revenue loss amidst other adverse consequences such as worsening the unemployment situation. On the other hand, the national government needs to address these challenges, because the core policy problem is a national enforcement problem that may not often be addressed by county government policy and legislation.

At the same time legislators both in the national assembly as well as in the county assemblies will find this information useful. As representatives of particular constituents, whose role is to provide oversight in the management of their affairs, might use the survey findings to initiate legislative reforms that will enhance the property rights regime leading to more inclusive growth of MSEs.

Regulatory enforcement agencies might also use this survey to initiate awareness and sensitization programs that improve the dissemination of property rights information to MSEs as well as members of the general public.

## 7.0. Bibliography


1. Owiro D. (2011) Kenya Property Markets Scorecard: Conditions for small businesses, CIPE/IEA-Kenya Washington DC., USA
2. Ahmed S. (2009) Methods in Sample Surveys: Cluster Sampling, Johns Hopkins University, Baltimore, Maryland, USA.
3. Fienberg S. (2003) Notes on Cluster Sampling for statistics: sampling surveys and societies, Carnegie Melon University, Pittsburgh, Pennsylvania, USA.
4. Government of Kenya (2010), Constitution of the Republic of Kenya, Government Printers, Nairobi, Kenya
5. National Land Policy 2009, Government Printers, Nairobi, Kenya
6. Lands Act 2012, Government Printers, Nairobi, Kenya
7. Land Registration Act 2012, Government Printers, Nairobi, Kenya
8. National Land Commission Act 2012, Government Printers, Nairobi, Kenya
9. Community Land Bill 2013, Government Printers, Nairobi, Kenya

# 8.0. Appendices

## Appendix 1: Questionnaire

Section 1: Respondents Details
Name:
Physical Address:
Contacts:
Type of Business Operation:
Years of Operation:
Daily Hours of Operation:

Section 2.A: Type of Business
1. Is the business owner operated?
    - Yes
    - No
2. What is the type ownership of the business?
    - Sole-proprietorship
    - Partnership
    - Limited Company

3. Is the business registered?
    - Yes
    - No

3.a. If yes, which type of registration?
    Business name
    Partnership
    Company

3.b. If no, Why is it not registered?

Section 2.B: Business Characteristics

4. How many business locations do you operate from within the city and outside/ How many branches/locations?

5. How many employees does the enterprise have?

6. Does the business have any shifts, e.g. 6-hour shifts, etc.?

7. What is the daily, weekly or monthly stock/ revenue?

Section 3.A: Module on Access to Property Rights

8. How did you obtain initial access to the property/commercial space,

Used a property manager/agent,

Was the agent licensed or not?

Did not use a property agent

Where did you get information from?

How long did the search process take?

9. Did you incur any costs in obtaining the property/commercial space

What costs?

10. What additional costs did you incur in accessing the property

11. Do you have any legal document/agreement for accessing the commercial space for your business?

11.a If Yes, what type of legal document is it.

Who originated the document, were there any negotiations on the document

Are the conditions honored by both parties

11.b. If no, give reasons.

12. Have you had any conflicts with the landlord in the past

12.a. If Yes, how was it resolved, if resolved,

- Court Process
- Out of Court

If not resolved, what was the main challenge?

Section 3.B: Module on lease rates and period

13. What is the lease period

14. What services does the agreement guarantee,

14.a. Are services under the lease honoured
- Yes
- No

14.b If not honoured have you taken action
- If yes, what actions?
- If no, why?

Section 4: Module on Access to credit

15. Have you required credit in the operations of your business
- Yes
- No

15.a. If yes, did you obtain the credit and from which institutions?
If you did not obtain credit, why

15.b. If No, Why haven't you required the credit.

16. What are the main challenges of accessing credit in your opinion

Section 5: Module on the most binding constraints

17. What are the major constraints that your business faces

18. What is the most binding constraint to conducting your business as regards access to property rights

18.a. How would you rank your constraints from one to three

19. What is the role of the following bodies in solving the above constraints

- National government
- National Parliament
- Ministry of Local Government
- City Council of Nairobi

## Appendix 2: Raw Findings

### Part II: Business characteristics

*Owner business operated:*
Most of the interviewed businesses are owner operated (56%). It does not seem to have any impact on the number of locations and on the number of employees. Indeed, the proportions are very similar between owner and non owner operated business (see graphs). In term of revenue, the relatively large share of "withheld" answer (about 20%) prevent us from drawing a precise analysis.

### How to read the tables

The tables in this section are organized into three columns, with the first column showing the specific indicator being measured, the second column showing a related sub indicator of the main indicator. This second column is broken down into three rows: first row records the actual values observed, the second row records the proportion of the observed values in relation to the total number of observed values, and the third row records the proportion of the observed value in proportion of main indicator choices. The last column indicates the totals.

For example, table 1 below summarizes the information for whether a business is owner operated, with yes or no responses, and further recording how many branches the business has with a choice of three options, one , two or more than two locations.

Therefore, in reading this particular table, row one records that from our sample , the number of businesses that are not owner operated, 35 of them have operate from only one location, 10 of them operate out of two locations and 8 operate from more than two locations. The second row in column two indicates that of the businesses that are not owner operated 66% operate in one location, 18.87% from two locations and 15.09% from more than two locations. The third column shows that 40.7% of businesses that are not owner operated operate from one location as compared with 59.3% of owner operated businesses operating from one location.

The totals columns and rows show the corresponding number of actual observations, and percentages of the various choices.

Table 1

| Owner operated business | How many locations | | | Total |
|---|---|---|---|---|
| | one location | two location | more than | |
| No | 35 | 10 | 8 | 53 |
| | 66.04 | 18.87 | 15.09 | 100... |
| | 40.70 | 50.00 | 53.33 | 43.80 |
| Yes | 51 | 10 | 7 | 68 |
| | 75.00 | 14.71 | 10.29 | 100.00 |
| | 59.30 | 50.00 | 46.67 | 56.20 |
| Total | 86 | 20 | 15 | 121 |
| | 71.07 | 16.53 | 12.40 | 100.00 |
| | 100.00 | 100.00 | 100.00 | 100.00 |

Table 2

| Owner operated business | How many employees | | | Total |
|---|---|---|---|---|
| | one employee | two employee | more than | |
| No | 27 | 10 | 16 | 53 |
| | 50.94 | 18.87 | 30.19 | 100.00 |
| | 45.76 | 38.46 | 44.44 | 43.80 |
| Yes | 32 | 16 | 20 | 68 |
| | 47.06 | 23.53 | 29.41 | 100.00 |
| | 54.24 | 61.54 | 55.56 | 56.20 |
| Total | 59 | 26 | 36 | 121 |
| | 48.76 | 21.49 | 29.75 | 100.00 |
| | 100.00 | 100.00 | 100.00 | 100.00 |

Table 3

| Owner operated business | Revenue | | | | | Total |
|---|---|---|---|---|---|---|
| | 0 - 4999 | 5000 - 9999 | 10000 - 300 | above 300 | withheld | |
| No | 17 | 8 | 11 | 5 | 14 | 55 |
| | 30.91 | 14.55 | 20.00 | 9.09 | 25.45 | 100.00 |
| | 40.48 | 36.36 | 50.00 | 31.25 | 60.87 | 44.00 |
| Yes | 25 | 14 | 11 | 11 | 9 | 70 |
| | 35.71 | 20.00 | 15.71 | 15.71 | 12.86 | 100.00 |
| | 59.52 | 63.64 | 50.00 | 68.75 | 39.13 | 56.00 |
| Total | 42 | 22 | 22 | 16 | 23 | 125 |
| | 33.60 | 17.60 | 17.60 | 12.80 | 18.40 | 100.00 |
| | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 |

*Registered businesses:*

In our sample 25% of the businesses are registered. Although the sample is quite small, one can say from the following graphs that registered businesses tend to be more likely to have several locations and more employees than non-registered ones. Indeed, 40% of registered businesses have at least two locations and 63% have at least two employees against 25% and 47% for non-registered business respectively. Regarding revenue, even if the number of missing data is weakening the analysis, it appears clearly that registered businesses perform better since 45% make more than Ksh 10,000 a month against 25% for the non-registered.

Table 4

| Business registered | How many locations | | | Total |
|---|---|---|---|---|
| | one location | two location | more than | |
| No | 68 | 13 | 10 | 91 |
| | 74.73 | 14.29 | 10.99 | 100.00 |
| | 79.07 | 65.00 | 66.67 | 75.21 |
| Yes | 18 | 7 | 5 | 30 |
| | 60.00 | 23.33 | 16.67 | 100.00 |
| | 20.93 | 35.00 | 33.33 | 24.79 |
| Total | 86 | 20 | 15 | 121 |
| | 71.07 | 16.53 | 12.40 | 100.00 |
| | 100.00 | 100.00 | 100.00 | 100.00 |

Table 5

| Business registered | How many employees | | | Total |
|---|---|---|---|---|
| | one employee | two employee | more than | |
| No | 48 | 18 | 25 | 91 |
| | 52.75 | 19.78 | 27.47 | 100.00 |
| | 81.36 | 69.23 | 69.44 | 75.21 |
| Yes | 11 | 8 | 11 | 30 |
| | 36.67 | 26.67 | 36.67 | 100.00 |
| | 18.64 | 30.77 | 30.56 | 24.79 |
| Total | 59 | 26 | 36 | 121 |
| | 48.76 | 21.49 | 29.75 | 100.00 |
| | 100.00 | 100.00 | 100.00 | 100.00 |

Table 6

| Business registered | Revenue | | | | | Total |
|---|---|---|---|---|---|---|
| | 0 - 4999 | 5000 - 9999 | 10000 - 300 | above 300 | withheld | |
| No | 33 | 19 | 16 | 8 | 18 | 94 |
| | 35.11 | 20.21 | 17.02 | 8.51 | 19.15 | 100.00 |
| | 78.57 | 86.36 | 72.73 | 50.00 | 78.26 | 75.20 |
| Yes | 9 | 3 | 6 | 8 | 5 | 31 |
| | 29.03 | 9.68 | 19.35 | 25.81 | 16.13 | 100.00 |
| | 21.43 | 13.64 | 27.27 | 50.00 | 21.74 | 24.80 |
| Total | 42 | 22 | 22 | 16 | 23 | 125 |
| | 33.60 | 17.60 | 17.60 | 12.80 | 18.40 | 100.00 |
| | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 |

# Part III: Property Rights

## Access to Property

Table 7

| Access to property | Business registered | | Total |
|---|---|---|---|
| | No | Yes | |
| Informal agent | 41 | 5 | 46 |
| | 89.13 | 10.87 | 100.00 |
| | 53.95 | 18.52 | 44.66 |
| Licensed agent | 11 | 11 | 22 |
| | 50.00 | 50.00 | 100.00 |
| | 14.47 | 40.74 | 21.36 |
| Advertisement | 5 | 0 | 5 |
| | 100.00 | 0.00 | 100.00 |
| | 6.58 | 0.00 | 4.85 |
| Friends | 19 | 11 | 30 |
| | 63.33 | 36.67 | 100.00 |
| | 25.00 | 40.74 | 29.13 |
| Total | 76 | 27 | 103 |
| | 73.79 | 26.21 | 100.00 |
| | 100.00 | 100.00 | 100.00 |

From Table 7 one can see that individuals who relied on advertisement or informal agents are much more likely not to register their business than those who relied on friends/relatives or licensed agents. As a result one could infer that most vulnerable/poor people resort to informal agents but those who can deal with someone they know personally or with a licensed agent prefer to do so. However, at this stage of the analysis, one cannot know whether using an informal agent makes people not register or whether it is due to specific characteristics of this population (i.e.: those who require informal agent services).

Table 8

| Access to property | Why is the business not registered | | | | | Total |
|---|---|---|---|---|---|---|
| | awareness | time | cost | uses trad. | other | |
| Informal agent | 4 | 4 | 7 | 26 | 0 | 41 |
| | 9.76 | 9.76 | 17.07 | 63.41 | 0.00 | 100.00 |
| | 33.33 | 50.00 | 53.85 | 60.47 | 0.00 | 53.25 |
| Licensed agent | 3 | 1 | 2 | 5 | 0 | 11 |
| | 27.27 | 9.09 | 18.18 | 45.45 | 0.00 | 100.00 |
| | 25.00 | 12.50 | 15.38 | 11.63 | 0.00 | 14.29 |
| Advertisement | 1 | 0 | 0 | 4 | 0.00 | 5 |
| | 20.00 | 0.00 | 0.00 | 80.00 | 0.00 | 100.00 |
| | 8.33 | 0.00 | 0.00 | 9.30 | 0.00 | 6.49 |
| Friends | 4 | 3 | 4 | 8 | 1 | 20 |
| | 20.00 | 15.00 | 20.00 | 40.00 | 5.00 | 100.00 |
| | 33.33 | 37.50 | 30.77 | 18.60 | 100.00 | 25.97 |
| Total | 12 | 8 | 13 | 43 | 1 | 77 |
| | 15.58 | 10.39 | 16.88 | 55.84 | 1.30 | 100.00 |
| | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 |

Table 8 shows that, among individuals who did not register their business, those who relied on a informal agent are more likely to report having used a trade license as the main reason not to be legal than respondents who relied on a licensed agent or on relatives.

## Table 9

| Access to property | How many locations | | | Total |
|---|---|---|---|---|
| | one location | two location | more than | |
| Informal agent | 34 | 9 | 3 | 46 |
| | 73.91 | 19.57 | 6.52 | 100.00 |
| | 47.22 | 45.00 | 27.27 | 44.66 |
| Licensed agent | 11 | 7 | 4 | 22 |
| | 50.00 | 31.82 | 18.18 | 100.00 |
| | 15.28 | 35.00 | 36.36 | 21.36 |
| Advertisement | 2 | 1 | 2 | 5 |
| | 40.00 | 20.00 | 40.00 | 100.00 |
| | 2.78 | 5.00 | 18.18 | 4.85 |
| Friends | 25 | 3 | 2 | 30 |
| | 83.33 | 10.00 | 6.67 | 100.00 |
| | 34.72 | 15.00 | 18.18 | 29.13 |
| Total | 72 | 20 | 11 | 103 |
| | 69.90 | 19.42 | 10.68 | 100.00 |
| | 100.00 | 100.00 | 100.00 | 100.00 |

## Table 10

| Access to property | How many employees | | | Total |
|---|---|---|---|---|
| | one employee | two employee | more than | |
| Informal agent | 30 | 8 | 8 | 46 |
| | 65.22 | 17.39 | 17.39 | 100.00 |
| | 57.69 | 34.78 | 28.57 | 44.66 |
| Licensed agent | 4 | 7 | 11 | 22 |
| | 18.18 | 31.82 | 50.00 | 100.00 |
| | 7.69 | 30.43 | 39.29 | 21.36 |
| Advertisement | 0.00 | 2 | 3 | 5 |
| | 0.00 | 40.00 | 60.00 | 100.00 |
| | 0.00 | 8.70 | 10.71 | 4.85 |
| Friends | 18 | 6 | 6 | 30 |
| | 60.00 | 20.00 | 20.00 | 100.00 |
| | 34.62 | 26.09 | 21.43 | 29.13 |
| Total | 52 | 23 | 28 | 103 |
| | 50.49 | 22.33 | 27.18 | 100.00 |
| | 100.00 | 100.00 | 100.00 | 100.00 |

Table 11

| Access to property | Revenue | | | | | Total |
|---|---|---|---|---|---|---|
| | 0 - 4999 | 5000 - 9999 | 10000 - 300 | above 300 | withheld | |
| Informal agent | 27 | 6 | 4 | 2 | 7 | 46 |
| | 58.70 | 13.04 | 8.70 | 4.35 | 15.22 | 100.00 |
| | 69.23 | 31.58 | 25.00 | 13.33 | 50.00 | 44.66 |
| Licensed agent | 3 | 4 | 5 | 7 | 3 | 22 |
| | 13.64 | 18.18 | 22.73 | 31.82 | 13.64 | 100.00 |
| | 7.69 | 21.05 | 31.25 | 46.67 | 21.43 | 21.36 |
| Advertisement | 1 | 0.00 | 3 | 0.00 | 1 | 5 |
| | 20.00 | 0.00 | 60.00 | 0.00 | 20.00 | 100.00 |
| | 2.56 | 0.00 | 18.75 | 0.00 | 7.14 | 4.85 |
| Friends | 8 | 9 | 4 | 6 | 3 | 30 |
| | 26.67 | 30.00 | 13.33 | 20.00 | 10.00 | 100.00 |
| | 20.51 | 47.37 | 25.00 | 40.00 | 21.43 | 29.13 |
| Total | 39 | 19 | 16 | 15 | 14 | 103 |
| | 37.86 | 18.45 | 15.53 | 14.56 | 13.59 | 100.00 |
| | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 |

Regarding business performances, table 9, 10 and 11 show that, on average, individuals who relied on a licensed agent are more likely to have higher revenue, several locations and more than one employee. Indeed, while 83% of businesses that have been obtained using contacts other than agents had only one location, this figure slightly decreases to 76% for businesses of individuals asking for informal agent services but drops to 50% for those who relied on a licensed agent. Assuming that the number of locations is a good proxy for economic performance, this finding clearly supports the hypothesis that people who used a licensed agent are more successful businessmen.

The trend for the number of employee is similar since 35% and 40% of "informal agent-businesses" and "relatives-businesses" respectively have more than one employee when it is only the case for 82% of "licensed a gent-businesses".

On the revenues side, 55% of licensed agent-businesses make at least Ksh 10,000 a month. This figure drops to 33% for relatives-businesses and to 13% for informal agent-businesses.

Table 12

| Access to property | Are services honored | | Total |
|---|---|---|---|
| | No | Yes | |
| Informal agent | 4 | 42 | 46 |
| | 8.70 | 91.30 | 100.00 |
| | 33.33 | 47.30 | 46.00 |
| Licensed agent | 2 | 20 | 22 |
| | 9.09 | 90.91 | 100.00 |
| | 16.67 | 22.73 | 22.00 |
| Advertisement | 0.00 | 3 | 3 |
| | 0.00 | 100.00 | 100.00 |
| | 0.00 | 3.41 | 3.00 |
| Friends | 6 | 23 | 29 |
| | 20.69 | 79.31 | 100.00 |
| | 50.00 | 26.14 | 29.00 |
| Total | 12 | 88 | 100 |
| | 12.00 | 88.00 | 100.000 |
| | 100.00 | 100.00 | 100.00 |

From Table 12 one learns that individuals who relied on agents, both licensed and informal, are more likely to see services honored than those who relied on friends (91% against 79%). One should note that in the large majority of the cases the rental services are honored. However, when they are not, only 10% of the individuals in conflict with their landlord go to court. This last finding underlines the lack of trust/confidence in the judiciary system.

Table 13

| How did you solve it | Frequently | Percent | Cumulative |
|---|---|---|---|
| Court process | 2 | 11.76 | 11.76 |
| Out of court | 15 | 88.24 | 100.00 |
| **Total** | **17** | **100.00** | |

All the respondents in our sample claimed having incurred many costs in obtaining their commercial space. 90% of them report having paid a deposit fee and 69% faced goodwill costs. 61% of the sample incurred both.

Table 14

| Held legal document | Frequently | Percent | Cumulative |
|---|---|---|---|
| 0 | 20 | 16.00 | 16.00 |
| Lease | 28 | 22.00 | 38.40 |
| Goodwill | 21 | 16.00 | 55.20 |
| Lea-gw | 25 | 20.00 | 75.20 |
| Deposit | 8 | 6.40 | 81.60 |
| Lea-dep | 9 | 7.20 | 88.80 |
| Gw-dep | 4 | 3.20 | 92.00 |
| Lea-gw-dep | 10 | 8.00 | 100.00 |
| **Total** | **125** | **100.00** | |

Table 14 shows that 84% of the respondents hold legal documents, mainly attesting to lease conditions or goodwill payment. Among individuals who do not hold any legal documents, a small majority (55%) had hired an informal agent. One should notice as well that 95% of these respondents who have no document did not register their business. While friend/ acquaintance and licensed agent users are equally likely to hold lease certificates, individuals who relied on informal agents are less likely to hold such documents. In general, licensed agent users are more likely to be given legal documents.

It appears that property agents tend to lower the probability of being asked for goodwill. Using a licensed agent also slightly reduces the probability of being asked a deposit fee.

## Access to Credit

Table 15

| Business registered | Credit Operation | | Total |
|---|---|---|---|
| | No | Yes | |
| No | 40 | 42 | 82 |
| | 48.78 | 51.22 | 100.00 |
| | 74.07 | 72.41 | 73.21 |
| Yes | 14 | 16 | 30 |
| | 46.67 | 53.33 | 100.00 |
| | 25.93 | 27.59 | 26.79 |
| Total | 54 | 58 | 112 |
| | 48.21 | 51.79 | 100.00 |
| | 100.00 | 100.00 | 100.00 |

Slightly more than half of the respondents have required credit (52%) to start their business, most of them from private banks. It is interesting to notice that credit users are equally shared between registered and non-registered businesses.

Table 16

| Access to property | Credit Operation | | Total |
|---|---|---|---|
| | No | Yes | |
| Informal agent | 18 | 27 | 45 |
| | 40.00 | 60.00 | 100.00 |
| | 42.86 | 50.00 | 46.88 |
| Licensed agent | 8 | 12 | 20 |
| | 40.00 | 60.00 | 100.00 |
| | 19.05 | 22.22 | 20.83 |
| Advertisement agent | 1 | 3 | 4 |
| | 25.00 | 75.00 | 100.00 |
| | 2.38 | 5.56 | 4.17 |
| Friends | 15 | 12 | 27 |
| | 55.56 | 44.44 | 100.00 |
| | 35.71 | 22.22 | 28.12 |
| Total | 42 | 54 | 96 |
| | 43.75 | 56.25 | 100.00 |
| | 100.00 | 100.00 | 100.00 |

Table 16 shows that 60% of individuals having relied on agents, both licensed and informal, used a credit when only 44% of those who relied on relatives did. Explanations could be that agents assist in obtaining funding or that individuals who access property from relatives benefit from lower prices and need credit to a lower extent. Individual who relied on friends/acquaintances are more likely to report "savings" as a reason not to borrow.

The main constraints reported in access to credit are high interest rates and lack of collateral accounting for 60% and 62% of the answers, respectively. Otherwise, competition is by far the major constraint faced by the respondents as 74% quoted it as a serious issue. The main request to the national government is financial support (42% of the sample); yet, most of the individuals interviewed do not seem to expect any significant action from the Parliament. The reputation of local governments is far from the top since 61% of the sample claimed that they should eliminate corruption.

## NOTES:

## NOTES:

The Institute of Economic Affairs (IEA -Kenya) is a Public Policy think tank and a civic forum that seeks to promote pluralism of ideas through open, active and informed public debates on key policy issues, both economic and political. The IEA is independent of political parties, pressure groups, lobbies and any other partisan interests.

Institute of Economic Affairs

*With the support of*

CIPE


**Institute of Economic Affairs**

5th Floor, ACK Garden House | P.O. Box 53898 - 00200, Nairobi.

Tel:+254-20-2721262,+254-20-2717402 | Fax:+254-20-2716231

Email:admin@ieakenya.or.ke | Website:www.ieakenya.or.ke