



THE REPUBLIC OF KENYA

LAWS OF KENYA

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## **LAND ACT**

NO. 6 OF 2012

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**NO. 6 OF 2012**

**LAND ACT**

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**NO. 6 OF 2012**

**LAND ACT**

*[Date of assent: 27th April, 2012.]*

*[Date of commencement: 2nd May, 2012.]*

**An Act of Parliament to give effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land based resources, and for connected purposes**

[Act No. 6 of 2012, Act No. 19 of 2015, Act No. 25 of 2015, Act No. 28 of 2016, L.N. 105 of 2017.]

**PART I – PRELIMINARY PROVISIONS**

**1. Short title**

This Act may be cited as the Land Act, 2012.

**2. Interpretation**

In this Act, unless the context otherwise requires—

**“actual notice”** means the notice which a person has personally of a matter or action or document or the rights and interests of another person;

**“adjoining”** in relation to parcels of public land, includes parcels of land separated by—

- (a) roads;
- (b) railways;
- (c) watercourses or other natural features of such a character as to be insufficient to prevent the passage of stock; or
- (d) reserves or unallocated public land.

**“agriculture or agricultural”** has the meaning assigned to it by the Agriculture, Fisheries and Food Authority Act, 2013 (No. 13 of 2013);

**“alienation of land”** means the sale or other disposal of the rights to land;

**“allocation of land”** means the legal process of granting rights to public land;

**“assignee”** means a person to whom an assignment is made;

**“building”** means any structure or erection of any kind whatsoever whether permanent or temporary, whether movable or immovable and whether completed or uncompleted;

**“Cabinet Secretary”** means the Cabinet Secretary responsible for matters relating to land;

**“certificate of lease”** has the meaning assigned to it under the law relating to land registration;

**“certificate of title”** has the meaning assigned to it under the law relating to land registration;

**“charge”** means an interest in land securing the payment of money or money’s worth or the fulfilment of any condition, and includes a subcharge and the instrument creating a charge, including—

- (a) an informal charge, which is a written and witnessed undertaking, the clear intention of which is to charge the chargor’s land with the repayment of money or money’s worth obtained from the chargee; and
- (b) a customary charge which is a type of informal charge whose undertaking has been observed by a group of people over an indefinite period of time and considered as legal and binding to such people;

**“child”** has the meaning assigned to it in Article 260 of the Constitution;

**“Commission”** means the National Land Commission established by Article 67 of the Constitution;

**“community land”** has the meaning assigned to it in Article 63 of the Constitution;

**“compulsory acquisition”** means the power of the State to deprive or acquire any title or other interest in land for a public purpose subject to prompt payment of compensation;

**“corruption”** has the meaning assigned to it under the Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003);

**“county executive committee member”** means the county executive committee member responsible for matters relating to land;

**“Court”** means the Environment and Land Court established under the Environment and Land Court Act, 2011 (No. 19 of 2011);

**“co-tenancy”** means the ownership of land by two or more persons in undivided shares and includes joint tenancy or tenancy in common;

**“customary land”** means private land on which one or more members of the family have customary rights of ownership;

**“customary land rights”** refer to rights conferred by or derived from Kenyan customary law whether formally recognized by legislation or not;

**“dealing”** includes disposition and transmission;

**“deliver”** includes to transmit by post, hand, email, fax or other prescribed medium;

**“development”** means the carrying out of any building operation, engineering operation, farming activities or mining operation in, on, under or over land or the making of any change of a substantial nature in the use of land;

**“disposition”** means any sale, charge, transfer, grant, partition, exchange, lease, assignment, surrender, or disclaimer and includes the disclaimer or the creation of an easement, a usufructuary right, or other servitude or any other interest in a land or a lease and any other act by the owner of land or under a lease where the owner’s rights over that land or lease are affected or an agreement to undertake any of the dispositions;

**“dwelling house”** means any house or part of a house or room used as a separate dwelling in any building and includes a garden or other premises within the curtilage of and used as a part of the dwelling house;

**“easement”** means a non-possessory interest in another’s land that allows the holder to use the land to a particular extent, to require the proprietor to undertake an act relating to the land, or to restrict the proprietor’s use to a particular extent, and shall not include a profit;

**“freehold”** means the unlimited right to use and dispose of land in perpetuity subject to the rights of others and the regulatory powers of the national government, county government and other relevant state organs;

**“geo-reference”** means reference to an object by a specific location either on, above or below the earth’s surface;

**“geo-referenced boundaries”** means reference to boundaries of a parcel of land to a specific or unique location on, above or below the earth surface as defined in the Survey Act (Cap. 299);

**“instrument”** means a writing, including an enactment which creates or affects legal or equitable rights and liabilities and includes any covenant or condition expressed in an instrument or implied in a instrument under this Act or any other law relating to land and, except where otherwise provided includes, any variation of an instrument;

**“interest”** means a right in or over a land;

**“joint tenancy”** means a form of concurrent ownership of land where two or more persons each possess the land simultaneously and have undivided interest in the land under which upon the death of one owner it is transferred to the surviving owner or owners;

**“land”** has the meaning assigned to it in Article 260 of the Constitution;

**“Land Preservation Order”** ban order served under the Agriculture, Fisheries and Food Authority, 2013 ( No. 13 of 2013);

**“lawful improvements”** means improvements which increase or improve the value of land which have been quantified by a qualified valuer in accordance with all applicable law and includes —

- (a) any permanent infrastructural developments including dams, reservoirs, water treatment plants;
- (b) any buildings;
- (c) any growing commercial trees or shrubs;
- (d) any water points, fences and other pastoral infrastructure that may be on the land.

**“lessee”** means a person to whom a lease is granted and includes a person who has accepted a transfer or assignment of a lease;

**“lessor”** means a person by whom a lease is granted and includes a person who has accepted the transfer or assignment of the reversion of a lease;

**“licence”** means a permission given by the Commission in respect of public land or proprietor in respect of private or community land or a lease which allows the licensee to do some act in relation to the land or the land comprised in the lease which would otherwise be a trespass, but does not include an easement or a profit;

**“management body”** means a statutory body, public corporation or a public agency that is authorized by the Commission to manage reserved land under section 16;

**“marriage”** means a civil, customary or religious marriage;

**“matrimonial home”** means any property that is owned or leased by one or both spouses and occupied by the spouses as their family home;

**“national spatial data infrastructure”** means the combination of technology, data, institutional arrangements and people that enables the discovery, evaluation and use of geographical data for users from all sectors of the economy and the general citizenry;

**“partition”** means the separation by a formal legal instrument of the shares in land or lease held by owners in common so that each such owner takes shares free of the rights of the others;

**“private land”** has the meaning assigned by Article 64 of the Constitution;

**“proprietor”** means—

- (a) in relation to land or a lease, the person named in the register as the proprietor; and
- (b) in relation to a charge of land or a lease, the person named in the register of the land or lease as the person in whose favour the charge is made;

**“public land”** has the meaning assigned by Article 62 of the Constitution and includes the coast foreshore, river, dams lakes and other reserves under the Survey Act (Cap. 299) or under any other law;

**“public purposes”** means the purposes of—

- (a) transportation including roads, canals, highways, railways, bridges, wharves and airports;
- (b) public buildings including schools, libraries, hospitals, factories, religious institutions and public housing;
- (c) public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs;
- (d) public parks, playgrounds, gardens, sports facilities and cemeteries;
- (e) security and defence installations;
- (f) settlement of squatters, the poor and landless, and the internally displaced persons; and
- (g) any other analogous public purpose;

**“registry”** has the meaning assigned to it under the law relating to land registration;

**“register of public land”** means a register for public land maintained under the law relating to land registration for the recording of rights and interests in and dispositions of public land;

**“restrictive agreement”** means an agreement by one owner of land restricting the building on, or the use, or other enjoyment of land for the benefit of the owner under a land or neighbouring land and includes a restrictive covenant;

**“riparian reserve”** means the land adjacent to the ocean, lake, sea, rivers, dams and water courses as provided under the Survey Act (Cap. 299) or any other written law;

**“substantial transaction”** means a transaction that involves the transfer, leasing or licensing of land to a local or foreign investor either alone or in a joint venture to carry out developments in agriculture and other approved ventures with direct developmental benefits for Kenya through —

- (a) a commitment for improving food security for Kenya through technology transfer leading to innovation, productivity increase and the requirement for a certain minimum percentage of the crops produced to be sold on local markets;
- (b) infrastructural developments from which the public can benefit;
- (c) demonstrable strong backward and forward linkages to other industries in Kenya;
- (d) generation of substantial foreign exchange through import substitution and exports;
- (e) sustainable agricultural practices and sustainable forest management which can contribute to addressing climate change concerns;
- (f) emphasis is on reference to Kenya and the application of Kenyan law without waiver of any rights of Kenya.

**“squatter”** means a person who occupies land that legally belongs to another person without that persons consent;

**“State”** has the meaning assigned to it under Article 260 of the Constitution;

**“state corporation”** has the same meaning assigned to it by the State Corporations Act (Cap. 446);

**“State organ”** has the meaning assigned to it under Article 260 of the Constitution;

**“tenancy in common”** means a form of concurrent ownership of land in which two or more persons possess the land simultaneously where each person holds an individual, undivided interest in the property and each party has the right to alienate, or transfer their interest;

**“transfer”** means the passing of land, a lease or a charge from one party to another by an act of the parties and not by operation of the law and includes the instrument by which such passing is effected;

**“transferee”** means a person who receives the land, lease or charge passed by an act of transfer;

**“transferor”** means the person who passes the land, lease or charge by an act of transfer;

**“transmission”** means the passing of land, a lease or a charge from one person to another by operation of law on death or insolvency or otherwise howsoever, and includes the compulsory acquisition of land under any written law;

**“trustee”** includes personal representative;

**“valuable consideration”** includes marriage, but does not include a nominal consideration; and

**“valuer”** means a valuer registered and licensed to practice as a valuer in accordance with the Valuers Act (Cap. 532);

**“unexhausted improvement”** means anything or any quality permanently attached to the land directly resulting from the expenditure of capital or labour by an owner or any person acting on the owner’s behalf and increasing the productive capacity, the utility, the sustainability of its environmental quality and includes trees, standing crops and growing produce whether of an agricultural or horticultural nature.

[Act No. 28 of 2016, s. 41.]

### 3. Application

(1) This Act shall apply to all land declared as—

- (a) public land under Article 62 of the Constitution;
- (b) private land under Article 64 of the Constitution; and
- (c) community land under Article 63 of the Constitution and any other written law relating to community land.

### 4. Guiding values and principles

(1) The guiding values and principles of land management and administration in this section bind all State organs, State officers, public officers and all persons whenever any of them—

- (a) enacts, applies or interprets any provisions of this Act; and
- (b) makes or implements public policy decisions.

(2) In the discharge of their functions and exercise of their powers under this Act, the Commission and any State officer or public officer shall be guided by the following values and principles—

- (a) equitable access to land; security of land rights;
- (b) security of land rights;
- (c) sustainable and productive management of land resources;

- (d) transparent and cost effective administration of land;
- (e) conservation and protection of ecologically sensitive areas;
- (f) elimination of gender discrimination in law, customs and practices related to land and property in land;
- (g) encouragement of communities to settle land disputes through recognized local community initiatives;
- (h) participation, accountability and democratic decision making within communities, the public and the Government;
- (i) technical and financial sustainability;
- (j) affording equal opportunities to members of all ethnic groups;
- (k) non-discrimination and protection of the marginalized; and
- (l) democracy, inclusiveness and participation of the people; and
- (m) alternative dispute resolution mechanisms in land dispute handling and management.

## **5. Forms of tenure**

(1) There shall be the following forms of land tenure—

- (a) freehold;
- (b) leasehold;
- (c) such forms of partial interest as may be defined under this Act and other law, including but not limited to easements; and
- (d) customary land rights, where consistent with the Constitution.

(2) There shall be equal recognition and enforcement of land rights arising under all tenure systems and non-discrimination in ownership of, and access to land under all tenure systems.

(3) Save as provided for in the Constitution, a registered proprietor shall not, for the purposes of obtaining planning permission, be obliged to surrender the freehold interest in exchange for leasehold.

[Act No. 28 of 2016, s. 42.]

## **6. Powers and functions of the Cabinet Secretary in land management**

The Cabinet Secretary shall, in relation to the management and administration of land—

- (a) develop policies on land, upon the recommendation of the Commission;
- (b) facilitate the implementation of land policy and reforms;
- (c) co-ordinate the management of the National Spatial Data Infrastructure;
- (d) co-ordinate the formulation of standards of service in the land sector;
- (e) regulate service providers and professionals, including physical planners, surveyors, valuers, estate agents, and other land related professionals, to ensure quality control;
- (f) monitor and evaluate land sector performance;

- (g) provide policy direction regarding all classes of land in consultation with the Commission where appropriate;
- (h) coordinate the development and implementation of a National Land Information System in collaboration with the Commission;
- (i) administer and undertake all dealings including registration of private land interests subject to Part VIII of this Act.

[Act No. 28 of 2016, s. 43.]

## **7. Methods of acquisition of title to land**

Title to land may be acquired through—

- (a) allocation;
- (b) land adjudication process;
- (c) compulsory acquisition;
- (d) prescription;
- (e) settlement programs;
- (f) transmissions;
- (g) transfers;
- (h) long term leases exceeding twenty-one years created out of private land; or
- (i) any other manner prescribed in an Act of Parliament.

## **PART II – MANAGEMENT OF PUBLIC LAND**

### ***General Provisions***

## **8. Management of public land**

(1) In managing public land on behalf of the national and county governments, the Commission—

- (a) shall identify public land, prepare and keep a database of all public land, which shall be geo-referenced and authenticated by the statutory body responsible for survey;
- (b) shall evaluate all parcels of public land based on land capability classification, land resources mapping consideration, overall potential for use, and resource evaluation data for land use planning; and
- (c) shall share data with the public and relevant institutions in order to discharge their respective functions and powers under this Act; or
- (d) may require the land to be used for specified purposes and subject to such conditions, covenants, encumbrances or reservations as are specified in the relevant order or other instrument.

(2) The Commission shall establish and maintain a register containing—

- (a) the particulars of all public land converted to private land by allocation;
- (b) the names and addresses of all persons whose land has converted to public through compulsory acquisition or reversion of leasehold;



- (c) particulars of community land converted into public; and
- (d) such other details as the Commission may consider necessary.

[Act No. 28 of 2016, s. 44.]

## **9. Conversion of land**

(1) Any land may be converted from one category to another in accordance with the provisions of this Act or any other written law.

(2) Without prejudice to the generality of subsection (1)—

- (a) public land may be converted to private land by allocation;
- (b) subject to public needs or in the interest of defence, public safety, public order, public morality, public health, or land use planning, public land may be converted to community land;
- (c) private land may be converted to public land by—
  - (i) compulsory acquisition;
  - (ii) reversion of leasehold interest to Government after the expiry of a lease; and
  - (iii) transfers; or
  - (iv) surrender.
- (d) Community land may be converted to either private or public land in accordance with the law relating to community land enacted pursuant to Article 63(5) of the Constitution.

(3) Any substantial transaction involving the conversion of public land to private land shall require approval by the National Assembly or county assembly as the case may be.

(4) *Deleted by Act No. 28 of 2016, s. 45.*

(5) The Commission may make rules for the better carrying out of the provisions of this section, and, without prejudice to the generality of the foregoing, the rules may provide for the following—

- (a) prescribing substantial transactions requiring approval of the National Assembly or the County Assembly as the case may be;
- (b) prescribing anything required to be prescribed under this section;
- (c) regulating and controlling the conversion of land from one category to another;
- (d) prescribing the factors to be applied or taken into account in determining land that is to be converted.

(6) Rules made under this section may contain—

- (a) different provisions for different parts of Kenya;
- (b) different provisions for different categories of conversion or kinds of transactions; or
- (c) exemptions or conditional exemptions from the operation of any rule made under this section.

(7) Any Rules made by the Commission under subsection (5) shall be tabled before Parliament for approval.

[Act No. 28 of 2016, s. 45.]

**10. Guidelines on the management of public land**

(1) The Commission shall prescribe guidelines for the management of public land by all public agencies, statutory bodies and state corporations in actual occupation or use of public land.

(2) The guidelines prescribed under subsection (1) shall indicate management priorities and operational principles for the management of public land resources for identified uses.

(3) The Commission shall, in the development of the guidelines under subsection (1), comply with Article 10(2) of the Constitution

**11. Conservation of ecologically sensitive public land**

(1) The Commission shall take appropriate action to maintain public land that has endangered or endemic species of flora and fauna, critical habitats or protected areas.

(2) The Commission shall identify ecologically sensitive areas that are within public lands and demarcate or take any other justified action on those areas and act to prevent environmental degradation and climate change.

(3) Notwithstanding subsection (2) the Commission shall consult existing institutions dealing with conservation.

**12. Allocation of public land**

(1) Whenever the national or county government is satisfied that it may be necessary to allocate the whole or part of a specific public land, the Cabinet Secretary or the County Executive Committee member responsible for matters relating to land shall submit a request to the Commission for the necessary action by way of—

- (a) public auction to the highest bidder at prevailing market value subject to and not less than the reserved price;
- (b) application confined to a targeted group of persons or groups in order to ameliorate their disadvantaged position;
- (c) public notice of tenders as it may prescribe;
- (d) public drawing of lots as may be prescribed;
- (e) public request for proposals as may be prescribed; or
- (f) public exchanges of equal value as may be prescribed.

(2) The Commission shall ensure that any public land that has been identified for allocation does not fall within any of the following categories—

- (a) public land that is subject to erosion, floods, earth slips or water logging;
- (b) public land that falls within forest and wild life reserves, mangroves, and wetlands or fall within the buffer zones of such reserves or within environmentally sensitive areas;
- (c) public land that is along watersheds, river and stream catchments, public water reservoirs, lakes, beaches, fish landing areas riparian and the territorial sea as may be prescribed;
- (d) public land that has been reserved for security, education, research and other strategic public uses as may be prescribed; and

- (e) natural, cultural, and historical features of exceptional national value falling within public lands;
- (f) reserved land; or
- (g) any other land categorized as such, by the Commission, by an order published in the *Gazette*.

(3) Subject to Article 65 of the Constitution, the Commission shall upon the request of the national or a county government set aside land for investment purposes.

(4) In fulfilling the requirements of subsection (3), the Commission shall ensure that the investments in the land benefit local communities and their economies.

(5) Subject to the Constitution and any other law, the Commission may, in consultation with the National and county governments, allocate land to foreign governments on a reciprocal basis in accordance with the Vienna Convention on Diplomatic Relations.

(6) At the expiry, termination or extinction of a lease granted to a non-citizen, reversion of interests or rights in and over the land shall vest in the national or county government as the case may be.

(7) Public land shall not be allocated unless it has been planned, surveyed and serviced and guidelines for its development prepared in accordance with section (17) of this Act.

(8) Public land allocated under this section shall not be sold, disposed off, subleased, or subdivided unless it is developed for the purpose for which it was allocated.

(9) Where the land allocated under subsection (8) is not developed in accordance with the terms and conditions stipulated in the lease, that land shall automatically revert back to the national or county government, as the case may be and the Commission shall include in its annual report the status of implementation of this subsection.

(10) In an allocation of public land under this section, the Commission may impose any terms, covenants, stipulations and reservations that the Commission considers advisable, including—

- (a) that the applicant shall personally occupy and reside on the land for a period set by the Commission;
- (b) the applicant shall do such work and spend such money for permanent improvement of the public land within the period specified by the Commission; or
- (c) the consideration that must be paid for a disposition of public land.

(11) The Commission shall make regulations prescribing the criteria for allocation and for connected matters.

(12) The Commission shall make regulations prescribing the criteria for allocation of public land and without prejudice to the generality of the foregoing, such regulations may prescribe—

- (a) forms of ownership and access to land under all tenure systems;

- (b) the procedure and manner of setting aside land for investments;
- (c) procedures to be followed with respect to auction and disposition of land;
- (d) appropriate mechanisms for repossession of land given to citizens at the expiry of a lease; and
- (e) mechanisms of benefit sharing with local communities whose land have been set aside for investment.

[Act No. 28 of 2016, s. 46.]

## 12A. Controlled land

- (1) In this part

**"controlled land"** means land in Kenya which is—

- (a) within a zone of twenty-five kilometres from the inland national boundary of Kenya;
- (b) within the first and second row from high water mark of the Indian Ocean;
- (c) any other land as may be declared controlled land under any law or statute.

**"ineligible person"** means—

- (i) an individual who is not a Kenyan citizen;
- (ii) the government of a country other than Kenya or a political subdivision of a country other than Kenya, or any agency of such government or political subdivision, or
- (iii) a body corporate which has non-citizens as shareholders shall be deemed to be a non-citizen.

**"interest"** has the meaning assigned to it in the Act and interest in land shall include transfer, lease, licence, charge, exchange, partition or other disposal of or dealing with any controlled land.

**"corporation"** means a body incorporated with or without a share capital under any written law in Kenya and the expression includes a limited liability partnership;

(2) No transaction in controlled land, including a transfer for a consideration or by way of trusts, gift *inter vivos* or otherwise to an ineligible person, shall be dealt with without the prior written approval of the Cabinet Secretary.

(3) In deciding whether to approve or not approve an application, the Cabinet Secretary shall seek the approval of the relevant authorities

[Act No. 28 of 2016, s. 47.]

## 13. Lessee pre-emptive rights to allocation

- (1) Before the expiry of the leasehold tenure, the Commission shall—

- (a) within five years, notify the lessee, by registered mail, of the date of expiry of the lease and inform the lessee of his or her pre-emptive right to allocation of the land upon application, provided that such lessee is a Kenyan citizen and that the land is not required by the national or county government for public purposes; and

- (b) if within one year the lessee shall not have responded to the notification, publish the notification in one newspaper of nationwide circulation.

(1A) Where a lease is not granted after an application under subsection (1), the Commission shall give the lessee the reasons for not granting the lease, in writing.

(2) The Commission may make rules for the better carrying out the provisions of this section, and without prejudice to the generality of the foregoing, the rules may provide for the following—

- (a) prescribing the procedures for applying for extension of leases before their expiry;
- (b) prescribing the factors to be considered by the Commission in determining whether to extend the tenure of the lease or re-allocate the land to the lessee;
- (c) the stand premium and or the annual rent to be paid by the lessee in consideration of extension of the lease or re-allocation of the land;
- (d) other covenants and conditions to be observed by the lessee.

[Act No. 28 of 2016, s. 48.]

#### **14. Notification requirements applicable to allocation of public land**

(1) The Commission shall, before allocating any public land under this Act, issue, publish or send a notice of action, to the public and interested parties, at least thirty days before, offering for allocation, a tract or tracts of public land.

(2) The notice under subsection (1) shall include the terms, covenants, conditions and reservations which are to be included in the conveyance document and the method of allocation.

(3) The notice under subsection (1) shall provide a period of fifteen days from the date of its issuance, within which the public and interested parties may comment.

(4) At least thirty days prior to the allocation of public land, the Commission shall send a notice to the governor in whose county the public land proposed for allocation is located and to the head of the governing body of any administrative subdivision having development control or other land use regulatory responsibility in the geographic area within which the public lands are located and to the head of any administrative subdivision having administrative or public services responsibility in the geographic area within which the lands are located.

(5) The notice under subsection (4) shall be sent to other known interested parties including, but not limited to, adjoining landowners, persons in actual occupation of the land including—

- (a) marginalised communities and groups living in the general vicinity of the public lands being proposed for allocation; and
- (b) boards of cities and municipalities and town administrators, created under sections 12, 13 and 31 of the Urban Areas and Cities Act, 2011 (No. 13 of 2011), in the geographic vicinity within which the public lands proposed for allocation are located.

(6) The notice under subsection (4) shall be published in the *Gazette* and at least once a week for a period of three weeks and thereafter shall be published in a newspaper of general circulation in the general vicinity of the public land being proposed to be offered for allocation.

(7) A notice under this section above shall specify the place, date, and time of allocation, the appraised value of the land, describe with particularity each parcel of land to be allocated, and specify that the terms of allocation shall be available in the Commission's offices in Nairobi and the Commission office nearest the land being proposed for allocation.

(8) Failure to provide notice of proposed allocations as required under this section shall serve as grounds for the Commission to—

- (i) require that the notification procedures outlined in this subsection be repeated; or
- (ii) void the allocation on grounds that the notification requirements of this Act were not properly conducted.

### ***Reserved Public Land***

#### **15. Reservation and development of public land**

(1) Subject to Article 66(1) of the Constitution, the Commission shall, upon request by the national or county government, by order in the *Gazette*, reserve public land located within—

- (a) the surface of the earth and the subsurface rock;
- (b) any body of water on or under the surface;
- (c) marine waters in the territorial sea and exclusive economic zone;
- (d) natural resources completely contained on or under the surface; and
- (e) the air space above the surface,

for one or more purposes in the public interest.

(2) Land that has been reserved by the Commission shall only be used for the purpose set out by the Commission in the order designating the reservation.

(3) Upon coming into force of this Act, the Commission shall undertake an inventory of all land based natural resources.

[Act No. 28 of 2016, s. 49.]

#### **16. Placing of care, control and management of reserved public land**

(1) Upon request by the national or county government, the Commission may, by order in the *Gazette* —

- (a) vest the care, control and management of any reserved land with a statutory body, public corporation or a public agency for the same purpose as that for which the relevant public land is reserved under section 15 and for purposes ancillary or beneficial to that purpose; and
- (b) subject that care, control and management to such conditions as the Commission specifies.

(2) The Commission may by order in the *Gazette*, vary any condition to which the care, control and management of reserved land is subject.

(3) Prior to the variation under subsection (2) and where the variation affects a third party the Commission shall notify the third party of such variation.

(4) An order made under this section shall not create any interest in reserved public land in favour of the management body of that reserve.

(5) Where public land reserved under this Act for the purpose of recreation is leased or subleased under a power conferred under subsection (3), the lessee or sub-lessee shall not restrict public access to the area leased unless the terms of the management order or the lease or sublease provide otherwise.

(6) A management body with whom the care, control and management of a reserved land is placed by an order under subsection (1) shall have the capacity, to hold and deal with the reserved land in a manner consistent with—

- (a) the order; and
- (b) any laws or regulations governing the management body or the specific land that has been placed in reserve.

(7) Notwithstanding subsection (6), a management body shall not perform a function or exercise a power if another enactment expressly prevents the body from performing that function or exercising that power, or expressly authorises another person to perform that function or exercise that power.

[Act No. 28 of 2016, s. 50.]

## **17. Development plans**

(1) A management body shall, on its own motion or at the request of the Commission, submit to the Commission for approval a plan for the development, management and use of the reserved public land vested in the management body.

(2) Before submitting a plan to the Commission under subsection (1) a management body shall—

- (a) consider any conservation, environmental or heritage issues relevant to the development, management or use of the public land in its managed reserve for the purpose of that managed reserve; and
- (b) incorporate in the plan a statement that it has considered those issues in drawing up the plan;
- (c) submit an environmental impact assessment plan pursuant to existing law on environment; and
- (d) comply with the values and principles of the Constitution.

(3) If a management body submits a plan to the Commission under subsection (1) and the Commission approves that plan and notifies the management body of that fact, the management body may develop, manage and use the public land concerned in accordance with the plan as approved or subsequently varied as the case may be.

(4) Notwithstanding the provisions of this section, the Commission shall, in considering an application under this section, comply with the relevant law relating to development control.

**18. Revocation of management orders**

(1) If a management body does not comply with guidelines or directions issued by the Commission in writing, or does not submit a development plan in compliance with a request made under section 17(2), the Commission, by order in the *Gazette*, may revoke that management order.

(2) If the Commission considers that it is in the public interest to revoke a management order, the Commission may, by order in the *Gazette*, revoke the management order.

(3) The preparation and implementation of development plans under this Act shall be in accordance with the physical planning regulations and any other relevant law.

**19. Conservation of land based natural resources**

(1) The Commission shall make rules and regulations for the sustainable conservation of land based natural resources.

(2) Without limiting what the Commission may prescribe under subsection (1), the rules and regulations may contain—

- (a) measures to protect critical ecosystems and habitats;
- (b) incentives for communities and individuals to invest in income generating natural resource conservation programmes;
- (c) measures to facilitate the access, use and co-management of forests, water and other resources by communities who have customary rights to these resources;
- (d) procedures for the registration of natural resources in an appropriate register;
- (e) procedures on the involvement of stakeholders in the management and utilization of land-based natural resources; and
- (f) measures to ensure benefit sharing to the affected communities.

**PART III – ADMINISTRATION OF PUBLIC LAND*****Leases, Licences and Agreements for Public Land*****20. Licence for temporary purposes**

(1) The Commission may grant a person a licence to use unalienated public land for a period not exceeding five years subject to planning principles as it may prescribe.

(2) The Commission may serve a notice to quit upon the licensee at any time after the expiration of nine months from the date of the licence.

(3) The fee payable under a licence under this section, the period and the agreements and conditions of the licence, shall be prescribed by the Commission.

(4) The licensee may, with the consent of the Commission, transfer the benefit of a licence under this section, and the transfer and the consent thereto shall be endorsed on the licence.



**21. Removal of building under temporary Licence**

At any time before the licence expires, the occupant of any public land under a licence granted under section 20 may remove any structure or other building erected by the occupant.

**22. Penalty for unpaid fees, etc**

The Commission may declare a licence granted under section 20 to be forfeited if—

- (a) the fees payable under the licence is unpaid for one month after it became due;
- (b) any tax or taxes imposed upon the land, or upon a structure or building erected on the land, or upon the licensee, remains unpaid for two months after becoming due; or
- (c) if the occupant of the land fails to abide with the conditions of the licence.

***General Conditions Relating to Leases,  
Licences and Agreements for Public Land***

**23. Implied covenants and conditions by or lessor**

(1) In every lease relating to public land, unless the lease expressly provides otherwise, there is an implied covenant by the lessor—

- (a) that the lessor has full power to the land or lease; and
- (b) that the lessee, paying the rent and fulfilling the conditions of the lease, shall enjoy quiet possession of the premises without interruption by the lessor or any person claiming under the lessor, except so far as the laws for the time being in force may permit.

(2) A lease or licence for public land shall be issued by the Commission and shall be registered by the Chief Lands Registrar.

[Act No. 28 of 2016, s. 51.]

**24. Implied covenant and conditions by lessee or licensee**

In every lease or licence for public land under this Act, there shall be implied covenants and conditions by lessee or licensee that the lessee or licensee shall—

- (a) pay rent and royalties thereby reserved at the time and in the manner therein provided; and
- (b) pay all taxes, rates, charges, duties, assessments or outgoings of whatever description that may be imposed, charged or assessed upon the land or the buildings thereon, or upon the lessor or grantor or lessee or licensee in respect thereof.

[Act No. 28 of 2016, s. 52.]

**25. Buildings on leased public lands**

(1) Unless expressly stated to the contrary in a lease or license for public land under this Act, all buildings on public land leased or occupied under a license, whether erected by the lessee or licensee or not—

- (a) in the case of a lease for a term exceeding thirty years, shall pass to the national or county governments without payment of compensation, on the termination of the lease or license; or
- (b) in the case of a lease for a term not exceeding thirty years, may be removed by the lessee within three months of the termination, otherwise than by forfeiture, of the lease unless the Commission elects to purchase those buildings.

(2) If the Commission elects to purchase any buildings, as contemplated in subsection (1)(b), any disagreement as to the purchase price of the buildings, shall be resolved by reference to an independent professional valuer who shall be appointed by the Commission through an open, transparent and competitive process as per the public procurement law.

[Act No. 28 of 2016, s. 53.]

**26. Covenants and conditions binding on persons claiming under grant, lease or licence**

Every covenant or condition, whether expressed or implied, in a grant, lease or licence under this Act which is binding on a grantee, lessee or licensee shall, unless otherwise expressly provided in the grant, lease or licence, be binding upon all persons claiming an interest in the land that is the subject of the grant, lease or licence, and whose title is derived through or under the grantee, lessee or licensee.

**27. Obligations of children**

A child shall be capable of holding title to land through a trustee and such child shall be in the same position as an adult with regard to the child's liability and obligations to the land.

**28. Rents and other payments**

(1) The rent, royalties and payments reserved under any lease or licence shall be a debt owed to the Commission, and shall be paid by the lessee or licensee at the office of the Commission or at such other place as the Commission may prescribe.

(2) The annual rent reserved under any lease or licence shall be payable in advance on the first day of January in each year of the term.

(3) The payments made under subsection (2) shall be accounted for to the respective governments.

**29. Unpaid rents and other payments**

(1) If any funds due in respect of any rent, principal instalment, royalty or other payment (in this section referred to as "the principal debt") under any agreement lease or licence under this Act, or under any Act repealed by this Act, remain unpaid after the due date, a late payment interest at the rate of two percent per month or part thereof, or at such other rate as may from time to time be specified by the Commission in the *Gazette*, shall be charged on the amount remaining unpaid for more than one month after the due date until the full amount is recovered.

(2) Any payment made under subsection (1) shall first be attributed to the payment of outstanding interest and thereafter only when such interest has been paid in full shall any payment be attributed to the reduction of the principal debt.

(3) If any interest becomes payable under subsection (1) the Commission shall serve on the debtor a notice demanding payment of that interest in addition to the other money then due.

(4) Notwithstanding the foregoing provisions of this section, the Commission may waive the whole or part of any late payment of interest provided for by this section, if the debtor has provided the Commission a good and sufficient reason for the late payment.

(5) The Commission shall publish and publicize annually, any remission or waiver made under subsection (4).

(6) Notwithstanding the provisions of this section, the law relating to public financial management shall apply.

### **30. Commission may sue for rent, etc., in arrears**

Without prejudice to the Commission's right to recover a debt in any other way, the Commission may sue in Court for any rent, principal, instalment, royalty or other payment, payable under any agreement, lease or license under this Act, that is in arrears, or for any penalty payable under section 29.

### **31. Forfeiture of lease if rent unpaid or for breach of covenant**

(1) If any part of the rent or royalties reserved in a lease under this Act is unpaid for a period of twelve months after becoming due, or if the lessee breaches any express or implied covenant, the Commission may—

- (a) serve a notice upon the lessee, specifying the rent or royalties in arrears or the covenant of which a breach has been committed; and
- (b) commence an action in Court for the recovery of the land at any time at least one month after serving the notice contemplated in paragraph (a).

(2) In an action commenced under subsection (1)(b) on proof of the facts, the Court shall declare the lease forfeited, subject to relief upon such terms as may appear just.

(3) If the Court has declared a lease to be forfeited under subsection (2), the Commission may re-enter upon the land.

(4) In exercising the power of granting relief against forfeiture under this subsection (1) the Court shall be guided by the principles of the doctrines of equity.

### **32. Forfeiture of licence**

(1) Subject to any other provision of this Act, where the rent or any part thereof payable under a license issued under this Act is at any time unpaid for a period of thirty days after the same has become due, or if the licensee fails to comply with, or commits any breach of, the conditions, whether express or implied, of the license, the Commission may make an application in Court to declare the license forfeited.

(2) Upon receipt of an application under subsection (1), together with a statement specifying the rent in arrears or the condition which has not been complied with or of which a breach has been committed, the Court shall cause to be served upon the licensee, a copy of the statement together with a notice of the date, not being less than fourteen days from the date of the notice, when the application will be heard.

(3) If upon the date fixed for the hearing of the application or to which the hearing is adjourned it is proved to the satisfaction of the court that rent is in arrears or that the licensee has failed to comply with or has committed a breach of any of the conditions of the license, the Court shall, subject to such relief against forfeiture for non-payment of rent as may seem just, declare the license forfeited.

### **33. Debt owed to Commission not extinguished by forfeiture**

A forfeiture shall not extinguish any debt owed to the Commission in respect of any rent, royalty or other payment to be made by a lessee or licensee under a lease or license forfeited.

### **34. Subdivision, etc., of public land subject to continuing interests, etc.**

(1) If the Commission proposes to resurvey the boundaries of any leased public land, or to subdivide land that is the subject of any interests or cautions, the Commission may, with reasonable notice to the holders of the interests, or of the relevant cautioners, by order incorporating a survey plan or revised survey plan authenticated by the office or authority responsible for survey, make such adjustments to those boundaries as—

- (a) the Commission considers necessary; and
- (b) according to any proposed plan of subdivision approved under the law relating to physical planning,

without any obligation to make or pay compensation.

(2) The Commission shall notify all interest holders and relevant *caveators* of the boundaries adjustments made under subsection (1).

(3) On the adoption by the Commission of a survey plan or revised survey plan referred to in subsection (1) and the registration of the order with reference to that survey plan or revised survey plan, the boundaries of the relevant public land are adjusted accordingly—

- (a) despite the existence of any interests registered or cautions lodged in respect of that public land; and
- (b) with or without the consent of the holders of those interests or of the relevant cautioners.

(4) The Commission shall ensure that an adjustment made under subsection (3) is made in conformity with sound planning and land management principles so as to cause as little detriment as possible to any interest or *caveat* affected by that adjustment.

(5) On the adjustment under subsection (3) of the internal or external boundaries of leased public land subject to interests or *caveats*, the interests or *caveats* apply to the relevant locations or lots within those boundaries and not to the public land referred to in the instruments which created those interests or *caveats*.

(6) If the office or authority responsible for survey proposes to survey the boundaries of any land that is subject to any interests or cautions, for purposes of geo-referencing, the office will give reasonable notice to the holders of the interests or to the relevant cautioners and will make adjustments on the cadastral map, cadastral plan and the acreage without any obligation to pay compensation.

[Act No. 28 of 2016, s. 54.]

### **35. Acceptance of purchase money or rent not to operate as waiver of forfeiture**

The acceptance by or on behalf of the Commission of any purchase money or any rent or other payment under any lease or licence shall not be held to operate as a waiver by the Commission of any forfeiture accruing by reason of the breach of any covenant or condition annexed to any sale, lease or licence of or respecting public land, whether the sale, lease or licence is under this Act or under any other Act relating to the disposal of public land.

### **36. Notice of lease, license or agreement action on public land**

(1) A notice of action indicating the availability of public land for use through lease, licence, or agreement shall be published in the *Gazette* and in at least two daily newspapers of nationwide circulation when a determination has been made that such public land is available for a particular use.

(2) The notice under subsection (1) shall indicate the use proposed for the public land and shall notify the public that applications for a lease, licence or agreement shall be considered, and specify the form of negotiation, whether by competitive or non-competitive bidding, under which the land use authorization shall be issued.

## **PART IV – COMMUNITY LAND**

### **37. Community land**

Community land shall be managed in accordance with the law relating to community land enacted pursuant to Article 63 of the Constitution.

## **PART V – ADMINISTRATION AND MANAGEMENT OF PRIVATE LAND**

### ***Contracts Over Land***

### **38. Validity of contracts in sale of land**

(1) Other than as provided by this Act or by any other written law no suit shall be brought upon a contract for the disposition of an interest in land —

- (a) the contract upon which the suit is founded—
  - (i) is in writing;
  - (ii) is signed by all the parties thereto; and
- (b) the signature of each party signing has been attested to by a witness who was present when the contract was signed by such party.

(2) Subsection (1) shall not apply to—

- (a) a contract made in the course of a public action;
- (b) the creation or operation of a resulting, implied or a constructive trust; or
- (c) any agreement or contract made or entered into before the commencement of this Act, provided that—
  - (i) the verbal contracts shall be reduced to writing within two years from the date of enactment of this Act; and
  - (ii) the Cabinet Secretary shall put a notice of the requirement to reduce the contracts in writing, in a newspaper of nationwide circulation.

[Act No. 28 of 2016, s. 55.]

### **39. Validity of contracts in sale of land**

If, under a contract for the sale of land, the purchaser has entered into possession of the land, the vendor may exercise his or her contractual right to rescind the contract by reason of a breach of the contract by the purchaser by—

- (a) resuming possession of the land peaceably; or
- (b) obtaining an order for possession of the land from the court in accordance with the provisions of section 41.

### **40. Damages for breach of contract**

(1) Nothing in section 39 prevents a vendor from claiming damages and *mesne* profits from the purchaser for the breach of a contract for a sale, or for breach of any other duty to the vendor which the purchaser may be under independently of the contract, or affects the amount of damages that the vendor may claim.

(2) Any term express or implied in a contract or other instrument that conflicts with this section shall be inoperative.

### **41. Procedure for obtaining order for possession**

(1) A vendor who proposes to seek to regain possession of private land under section 39, shall serve a notice on the purchaser which shall inform the purchaser—

- (a) of the nature and extent of the breach complained of by the vendor;
- (b) whether the vendor considers that the breach is capable of being remedied by the payment of a stated amount of money owing under the contract;
- (c) whether the vendor considers that the breach is capable of being remedied by the purchaser doing or desisting from doing anything or paying reasonable compensation or both, and of the thing that the purchaser must do or desist from doing or the amount of compensation that shall be paid or both to remedy the breach and the time, being not less than thirty days, within which the actions referred to in this paragraph must be completed;
- (d) of the period within which the purchaser must remedy the breach, if the vendor considers that the breach is capable of being remedied; and

- (e) of the consequence where the purchaser fails to remedy the breach or if the vendor does not consider that the breach can be remedied, the vendor may seek an order from the court to possess the land and rescind the contract.

(2) The fact that the notice served under subsection (1) does not comply in every particular with the provisions of subsection (1) shall not—

- (a) render it invalid so long as the purport of the notice is clear; or
- (b) absolve the purchaser from the consequences of not responding to the notice.

#### **42. Relief against rescission of contract for the sale of land**

(1) If the vendor, after serving on the purchaser a notice under section 41, applies to the court for an order for possession of the land or if the vendor has peaceably entered on to the land in order to regain possession under section 39, the purchaser may apply to the court for relief against the rescission of the contract either—

- (a) in the proceedings for an order for possession; or
- (b) in proceedings brought by the purchaser.

(2) If the vendor has peaceably entered on to the land the purchaser shall apply for relief within ninety days after the entry on to the land.

(3) The court may grant relief on such terms as it considers appropriate, including relief for breach of any term or condition of the contract that is not capable of being remedied.

(4) An application for relief under this section shall not in itself to be taken as an admission by the purchaser that—

- (a) there has been a breach of the contract by the purchaser;
- (b) by reason of the breach, the vendor has the right to rescind the contract;
- (c) a notice has been duly and properly served on the purchaser; or
- (d) the time for remedying a breach or for paying an amount by way of compensation has expired, and the court may grant relief without determining any of those matters.

(5) Any, express or implied, term in a contract or other instrument to which this section applies that conflicts with or purports to set aside or negate this section shall be inoperative.

[Act No. 28 of 2016, s. 56.]

### ***Transfers***

#### **43. Transfer**

(1) In this Part, “transfer” includes a conveyance, an assignment, a transfer of land, a transfer of lease or other instrument used in the disposition of an interest in land by way of transfer.

(2) A proprietor may transfer land, a lease or a charge to any person (including himself or herself), with or without consideration, by an instrument in the prescribed form.

(3) The transfer shall be completed by the registration of the transferee as proprietor of the land, lease or charge.

(4) The transferee of a charge may require the chargor to execute the transfer for the purpose of acknowledging the amount due under the charge at the date of execution of the transfer.

#### **44. Transfer to take effect immediately**

A transfer shall not be expressed to take effect on the happening of any event or on the fulfilment of any condition or at any future time.

#### **45. Transfer of leases**

On the transfer of a lease, unless the contrary is expressed in the transfer, there shall be implied—

- (a) a warranty on the part of the transferor that the rent, agreements and conditions on the part of the lessee to be paid, performed and observed have been so paid, performed and observed up to the date specified in the transfer or, if no such date is specified, the date of the transfer; and
- (b) an agreement on the part of the transferee to pay the said rent as from the day following the date specified in the transfer or the date of the transfer, as the case may be, and to perform and observe the said agreements and conditions.

#### **46. Effect of transfer on agreement in leases**

(1) A transfer from a lessor or from a lessee shall possess all the rights, and be subject to all the liabilities, of the lessor or lessee, as the case may be, expressed or implied in the lease, or arising or which have arisen thereunder, and the transferee shall cease to be under any obligation or possessed of any rights in respect of the lease subject to subsection (2).

(2) Nothing in this section shall affect the rights or liabilities of the lessor or lessee, as the case may be, in respect of a breach of any of the agreements expressed or implied in a lease that occurred before the transfer.

#### **47. Transfer subject to charge**

In every transfer of land or a lease subject to a charge, there shall be an implied agreement by the transferee with the transferor to pay the interest, where applicable, secured by the charge.

#### **48. Transfer subject to lease**

A transfer of land that is subject to a lease shall be valid without the lessee acknowledging the transferee as lessor, but nothing in this section—

- (a) affects the validity of any payment of rent made by the lessee to the transferor; or
- (b) renders the lessee liable, for failure to pay rent to the transferee, for any breach of agreement to pay rent, before notice of the transfer is given to the lessee by the transferee.



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**Transmissions****49. Transmission on death of joint proprietor**

If one of two or more joint proprietors of any land, lease or charge dies, the Registrar shall, on proof of the death, delete the name of the deceased from the register by registration of the death certificate.

**50. Transmission on death of a sole proprietor or proprietor in common**

(1) If a sole proprietor or a proprietor in common dies, the proprietor's personal representative shall, on application to the Registrar in the prescribed form and on production to the Registrar of the grant, be entitled to be registered by transmission as proprietor in the place of the deceased with the addition after the representative's name of the words "as executor of the will of ( ) [deceased]" or "as administrator of the estate of ( ) [deceased]", as the case may be.

(2) Upon production of a grant, the Registrar may, without requiring the personal representative to be registered, register by transmission—

- (a) any transfer by the personal representative; and
- (b) any surrender of a lease or discharge of a charge by the personal representative.

(3) In this section, "grant" means the grant of probate of the will, the grant of letters of administration of the estate or the grant of summary administration of the estate in favour of or issued by the Public Trustee, as the case may be, of the deceased proprietor.

**51. Effect of transmission on death**

(1) Subject to any restriction on a person's power of disposing of any land, lease or charge contained in an appointment, the personal representative or the person beneficially entitled on the death of the deceased proprietor, as the case may be, shall hold the land, lease or charge subject to any liabilities, rights or interests that are unregistered but are nevertheless enforceable and subject to which the deceased proprietor held the same, but for the purpose of any dealing the person shall be deemed to have been registered as proprietor thereof with all the rights conferred by this Act on a proprietor who has acquired land, a lease or a charge, as the case may be, for valuable consideration.

(2) The registration of any person as aforesaid shall relate back to and take effect from the date of the death of the proprietor.

**52. Transmission on bankruptcy**

(1) On production to the Registrar of a certified copy of the order of court adjudging a proprietor bankrupt, or directing the estate of a deceased proprietor to be administered in accordance with section 375 of the Insolvency Act, 2015, the Registrar shall register the bankruptcy trustee, or the trustee appointed under that section, as proprietor of any land, lease or charge of which the bankrupt or the deceased proprietor is proprietor, in place of that bankrupt or proprietor.

(2) In making an entry in the register for the purpose of subsection (1), the Registrar shall describe the bankruptcy trustee, or the trustee appointed under section 375 of the Insolvency Act, 2015 as "trustee of the property of ( ..... ), a bankrupt.

[Act No. 19 of 2015, s. 176.]

**53. Transmission upon company's liquidation**

(1) As soon as practicable after being appointed as liquidator of a company, the liquidator shall—

- (a) produce to the Registrar the resolution or order appointing the liquidator; and
- (b) satisfy the Registrar that the person has complied with the requirements of Part VI of the Insolvency Act, 2015.

(1A) When the liquidator has complied with subsection (1), the Registrar shall—

- (a) record the appointment in respect of any land, lease or charge of which the company is registered as proprietor; and
- (b) register the copy of the resolution or order.

(2) An instrument executed by or on behalf of a company in liquidation delivered for registration after the appointment of the liquidator has been entered under subsection (1) shall be sealed with the common seal of the company and attested to by the liquidator or, in the case of a company not required by law to have a common seal, shall be signed by the liquidator whose signature shall be verified in accordance with the relevant law.

(3) As soon as practicable after a vesting order has been made under section 444 of the Insolvency Act, 2015, the liquidator shall lodge a copy of the order with the Registrar for registration under this Act.

(4) On receiving a copy of a vesting order in accordance with subsection (1), the Registrar shall register the liquidator as proprietor of the land, lease or charge to which the order relates.

[Act No. 19 of 2015, s. 177.]

**54. Transmission in other cases**

If a person has become entitled to any land, lease or charge under any law or by virtue of any order or certificate of sale made or issued under any law, the Registrar, on the application of any interested person supported by such evidence as the person may require, shall register the person entitled, as the proprietor.

**PART VI – GENERAL PROVISIONS ON LEASES****55. Application of this Part**

(1) Unless otherwise provided in a lease instrument, the provisions of this Part shall apply to all leases, other than leases governed by legislation relating to community land.

(2) The parties to a lease made or coming into effect before the commencement of this Act may agree, in writing, to adopt or incorporate any of the provisions of this Part into that lease and any provisions adopted or incorporated shall, unless the agreement otherwise provides, become a part of the lease and shall be enforceable in every respect, with effect from the date of the agreement.

(3) In this Part, unless the context expressly or by implication renders it unfeasible, references to a lease include a sublease.

**56. Power to lease land**

Subject to the provisions of this Act, the owner of private land may—

- (a) lease that land or part of it to any person for a definite period or for the life of the lessor or of the lessee or for a period which though indefinite, may be terminated by the lessor or the lessee; and
- (b) subject the lease to any conditions that may be required by this Act or any other law or that the lessor may impose.

**57. Periodic leases**

(1) If in any lease—

- (a) the term of the lease is not specified and no provision is made for the giving of notice to terminate the tenancy, the lease shall be deemed to be a periodic lease;
- (b) the term is from week to week, month to month, year to year or any other periodic basis to which the rent is payable in relation to agricultural land the periodic lease shall be for six months;
- (c) the lessee remains in possession of land with the consent of the lessor after the term of the lease has expired, then—
  - (i) unless the lessor and lessee have agreed, expressly or by implication, that the continuing possession shall be for some other period, the lease shall be deemed to be a periodic one; and
  - (ii) all the terms and conditions of the lease that are consistent with the provisions of sub-paragraph (i) shall continue in force until the lease is terminated in accordance with this section.

(2) If the owner of land permits the exclusive occupation of the land or any part of it by any person at a rent but without any agreement in writing, that occupation shall be deemed to constitute a periodic tenancy.

(3) The periodic tenancy contemplated in subsection (1)(a) shall be the period by reference to which the rent is payable.

(4) A periodic tenancy may be terminated by either party giving notice to the other, the length of which shall be not less than the period of the tenancy and shall expire on one of the days on which rent is payable.

**58. Short-term leases**

(1) A short term lease is a lease—

- (a) made for a term of two years or less without an option for renewal;
- (b) that is a periodic lease; and
- (c) to which section 57(2) applies.

(2) A short term lease may be made orally or in writing.

(3) A short term lease is not a registrable interest in land.

**59. Lease terminating on the occurrence of a future event**

A lease that comes into operation after the date on which this Act comes into operation and that provides for its termination or permits notice of its termination to be given on the occurrence of a future event shall not be invalid provided that the event is sufficiently defined in the lease so as to be identified when it occurs.

**60. Lessee remaining in possession after termination of lease without the consent of lessor**

(1) If a lessee remains in possession of land without the consent of the lessor after the lease has been terminated or the term of the lease has expired, all the obligations of the lessee under the lease continue in force until such time as the lessee ceases to be in possession of the land.

(2) A lessor who accepts rent in respect of any period after the lease has been terminated or the term of the lease has expired, shall not, by reason of that fact, be deemed to have consented to the lessee remaining in possession of the land, or as having given up on any of the rights or remedies of the lessor against the lessee for breach of a covenant or condition of the lease, and if the lessor continues to accept rent from a tenant who remains in possession for two months, after the termination of the lease, a periodic lease from month to month shall be deemed to have come into force.

**61. Future leases**

(1) For the avoidance of doubt, a lease of land may be made for a term to begin on a future date, not being later than twenty-one years after the date on which the lease is executed.

(2) A future lease, which is expressed to be for a period of more than five years, shall be of no effect unless and until it is, registered.

**62. Notice by co-owners**

If a lease is entered into by—

- (a) two or more lessors as co-owners; or
- (b) two or more lessees as co-owners,

and the lease is terminable by notice, the notice shall be given by and to all the co-owners, unless all the parties to the lease have, expressly or by implication, agreed otherwise.

**63. Sublease for a term that is the same as or shorter than the term of the head lease**

(1) This section shall apply to a sublease that comes into operation after the date of the commencement of this Act under which, a lessee enters or purports to enter into a sublease for a term that is to expire at the same time as or not later than, the expiry of the term of the head lease.

(2) A sublease to which this section applies shall not operate as an assignment of the head lease to the sub lessee, unless a contrary intention appears from the sublease or from the circumstances surrounding the granting of the sublease.

(3) The term of a sublease shall not be longer than the term of the head lease.

[Act No. 28 of 2016, s. 57.]

**64. Surrender to enable a new head lease to be entered into not to affect the sublease**

(1) The surrender of a lease for the purpose of enabling a new lease to the same lessee to be entered into shall not require the surrender of any sublease in respect of the surrendered lease, if, on or before the date on which the term of the new head lease is to expire—

- (a) the term of the sublease is to expire; or
- (b) in the case of a sublease that is a periodic tenancy, the sublease may be terminated by the giving of the specified period of notice of termination and the expiry of that period.

(2) A sublease preserved under subsection (1)—

- (a) shall continue in force as though it had been entered into in respect of the new head lease; and
- (b) all rights and obligations under the sublease, including those which relate to any period before the surrender of the head lease, shall continue to be enforceable, except to the extent that any such obligation is, by reason of the fact that a new head lease has been entered into, more onerous than it would have been had the original head lease not been surrendered.

(3) A sublease entered into in respect of a surrendered lease includes, for purposes of this section, any sublease entered into by a person deriving title through the lessee under the surrendered lease.

**65. Covenants implied in a lease on part of the lessor**

(1) In every lease, there shall be implied covenants by the lessor with the lessee, binding the lessor—

- (a) that so long as the lessee pays the rent and observes and performs the covenants and conditions contained or implied in the lease to be observed and performed on the lessee's part, the lessee shall peaceably and quietly possess and enjoy the land leased during the term of the lease without any interruption from or by the lessor or any person rightfully claiming through the lessor;
- (b) not to use or permit any adjoining or neighbouring land that the lessor owns or leases that would in any way render the leased land or any buildings on the leased land unfit or materially less fit for any purpose for which they may be used, consistent with the terms and conditions of the lease;
- (c) if only part of a building is leased, to keep the roof, all external and main walls and main drains, and the common parts and common installations and facilities, including common passages and walkways in a proper state of repair;
- (d) if any dwelling house, flat, or room is leased, that the house, flat or room is fit for human habitation at the commencement of the lease and shall be kept fit for human habitation during the lease;
- (e) that if, the leased premises or any part of them are destroyed or damaged at any time—

- (i) by fire, flood or explosion or other accident not attributable to the negligence of the lessee, or lessee's invitees or employees;
- (ii) by civil commotion; or
- (iii) by lightning, storm, earthquake, volcanic activity or other natural disaster,

so as to make the leased premises or any part of it wholly or partially unfit for occupation or use, the rent and any contribution payable by the lessee to the outgoings on the premises or a just proportion of that rent of contribution according to the nature and extent of the damage sustained shall be suspended and cease to be payable until the leased premises have been, once more, rendered fit for occupation and use; and if the leased premises have not been rendered fit for occupation and use within six months after their destruction or damage, the lessee shall have the option to terminate the lease after giving one month's notice;

- (f) if it is an express or implied term of the lease that the leased land or a building on it may be used for any one specific purpose or purposes, the lessee may terminate the lease, on giving one month's notice to the lessor, if the land or building cannot be, or can no longer lawfully be, used for any of those purposes; and
- (g) to pay all rates, taxes, dues and other outgoings that are payable in respect of the leased land except to the extent otherwise specified in the lease.

(2) There shall be implied in every lease covenants by the lessee empowering the lessor to—

- (a) either personally or by agents, enter, the leased land or buildings at any reasonable time and upon giving a seven days' notice to the lessee for the purpose of inspecting the condition and repair of the premises, or for carrying out repairs and making good any defects that it is the lessor's obligation so to do; but in the exercise of that power, the lessor shall not unreasonably interfere with the occupation and use of the land and buildings by the lessee;
- (b) terminate the lease by serving a notice of intention to terminate the lease on the lessee where—
  - (i) any rent is unpaid for one month after the due date for payment, whether or not a demand, in writing, for payment has been made by the lessor or an agent of the lessor;
  - (ii) the lessee has failed for a period of one month, to observe or perform any condition, covenant or other term, the observation or performance of which has been assumed by the lessee expressly or impliedly in the lease.

[Act No. 28 of 2016, s. 58.]

#### **66. Conditions implied on leases on part of the lessee**

(1) There shall be implied in every lease, covenants by the lessee with the lessor binding the lessee—

- (a) to pay the rent reserved by the lease at the times and in the manner specified in the lease;

- (b) to use any land in a sustainable manner and in accordance with any conditions imposed on the use of that land by the lease, or any written law or any provisions in a grant of a public land out of which that lease has been created and, in particular, not to cut down, injure or destroy any living tree on the land unless the purpose for which the land has been leased cannot be carried out without so doing;
- (c) to yield up the land and buildings in the same condition as they were when the term of the lease began, except that the lessee shall not be bound to repair damage or restore the land and buildings to the same conditions they were at the beginning of the lease if the damage or deterioration of the condition is caused by—
  - (i) reasonable wear and tear;
  - (ii) fire, flood or explosion or other accident not attributable to the negligence of the lessee, or the lessee's invitees or employees;
  - (iii) civil commotion;
  - (iv) lightning, storm, earthquake, volcanic activity or other natural disaster;
- (d) to keep all boundary marks in repair; and
- (e) to keep all buildings comprised in the lease in a reasonable state of repair.

**67. Consent by lessor to application by lessee under lease**

(1) On and after the commencement of this Act, a covenant by the lessee not to take an action without the consent of the lessor shall be construed as requiring the lessor not unreasonably to withhold consent to the taking of that action by the lessee.

(2) If a lessee applies to the lessor for consent to—

- (a) transfer or assign the lease;
- (b) enter into a sublease;
- (c) part with possession of the leased land or buildings;
- (d) change the use of the land or buildings from a use which is permitted under the lease;
- (e) extend, improve, add on to or in any other way develop any building beyond what is permitted in the lease;
- (f) create a charge over the lease;
- (g) take any of the actions referred to in sub paragraphs (a), (b), (c), (d), (e); or
- (h) in relation to any part of the leased land or buildings, or for any part of the term of the lease,

the lessor shall inform the lessee, in writing, within a reasonable time after receiving the application, whether the lessor is giving or refusing consent.

(3) Without limiting the generality of the lessor's obligation under subsection (1), consent is unreasonably withheld if the lessor as a condition of or in relation to the giving of consent—

- (a) requires the lessee to pay any money, by way of additional rent, or a premium or a fine or other consideration for the consent, other than the payment of the lessor's reasonable expenses incurred in connection with the giving of consent;
- (b) imposes on the lessee any unreasonable condition or precondition; or
- (c) the lessee has requested for consent to transfer or assign the lease or enter into a sublease, and the lessor objects to the gender or nationality or other personal characteristic of the transferee, assignee or sublessee, in circumstances that a reasonable person would consider those factors irrelevant to the granting of such consent.

(4) If the lessor refuses to give consent or gives consent subject to a condition or pre-condition and the lessee so requests, in writing, the lessor shall promptly inform the lessee, in writing, of the reasons for the refusal or for the imposition of the condition or pre-condition, as the case maybe.

(5) If the lessee or any person, to whom this section applies at the request of the lessee, has paid any money or suffered any loss in connection with subsection (3), that person may recover that money and seek damages for that loss from the lessor.

(6) This section shall not prevent the inclusion, in a lease, of a covenant binding the lessee absolutely not to take any action of the kind referred to in subsection (2).

#### **68. Merger of lessor's interest not to affect remedies**

If a sublessor surrenders the head lease to the owner or merges the head lease with the land out of which it was created, the owner of the land shall have all the same remedies against the sublessee for non-performance or non- observation of the covenants and conditions expressed or implied in the sublease and all the same rights to give notice of the termination of the sublessee to the subleases as the sublessor had before the surrendered or merged the head lease.

#### *Transfer and Assignment of Leases*

#### **69. Burden and benefit of covenants to run with the reversion**

(1) If the interest held by the lessor under a lease, the reversion, ceases to be so held by the lessor, whether by transfer, assignment, grant, operation of law or otherwise, then, unless a contrary intention, expressly or impliedly, appears from the lease, or from any other circumstance—

- (a) the obligations imposed on the lessor by covenant of the lease run with the reversion and may be enforced by the person who is from time to time entitled to the reversion;
- (b) the rights to the benefits of every covenant imposed on the lessee, that refers to the subject matter of the lease, may be exercised and enforced by the person who is from time to time entitled to the reversion against the person who is from time to time entitled to the lease.

(2) A person who becomes entitled to exercise a right to which subsection (1)(b) refers may exercise the right even if it first became exercisable or accrued before the time at which that person became so entitled unless before that time, the right was waived or the lessee was released from the obligation to which the right relates.



(3) If, in respect of a lease—

- (a) there has been a division of the reversion into different parts so that different persons are lessors of the different parts; or
- (b) the lease has terminated in relation to the part of the land comprised in the lease,

the obligations referred to in subsection (1)(a) and the rights and remedies referred to in subsection (1)(b) shall be apportioned, and to the extent required by that apportionment, remain attached to each part of that reversion or to that part of the land in respect of which the lease has not been terminated as the case may require and may be enforced by the person entitled to enforce those obligations under subsection (1)(a) and exercised by the person entitled to exercise those rights and remedies under subsection (1)(b).

#### **70. Effect of payment by lessee to assignor of reversion**

(1) If a lessor has transferred or assigned the reversion, any payment by the lessee of any part of the rent or of any other money due under the lease to the transferor or assignor shall discharge the lessee to the extent of that payment unless the lessee had actual notice of the transfer or assignment before making the payment.

(2) Notwithstanding any other provision to the contrary in any other written law, the registration of a transfer of the reversion shall not, for purposes of subsection (1), in itself, be an actual notice to the lessee of the transfer.

#### **71. Transferor or assignor of lease released from liability to pay rent and observe covenants thereafter**

(1) In respect of any lease or any transfer or assignment of a lease or part of it made or coming into effect on or after the date of the commencement of this Act—

- (a) the rule of the common law that a transferor or assignor of a lease remains liable on the personal covenant to the lessor for payment of rent and for all breaches of covenants, notwithstanding that the transferor or assignor is no longer in possession or occupation of the leased land, shall cease to apply; and
- (b) the effect of a transfer or assignment of a lease is, as from that date, to discharge absolutely and without more the transferor or assignor from any obligation to pay rent or to observe any covenants in respect of the land as from the date of the transfer or assignment, whether the person to whom the lease has been transferred or assigned is in or goes immediately into occupation or possession of the land so transferred or assigned.

(2) As long as the transferor or assignor remains in occupation of the leased land and notwithstanding the transfer or assignment, that transferor or assignor shall remain liable to pay rent and comply with all the covenants as if the person were still the lessee for as long as the person shall remain in occupation.

(3) Subsection (1) shall not absolve a transferor or assignor of a lease from any obligation to pay rent or remedy and breach of a covenant that accrued or arose during the term of the lease when that transferor or assignor was bound by all the covenants in that lease and the lessor may enforce all such obligations of that lease that have so accrued or arisen against that transferor or assignor notwithstanding that the lease has been transferred or assigned.

(4) As from the date of the commencement of this Act—

- (a) the rule of common law that a lessee remains liable to pay rent and comply with all the covenants notwithstanding that the lessee has, with the agreement of the lessor, vacated the leased land before the date for the termination of the lease, shall cease to apply; and
- (b) subsection (5) shall forthwith apply.

(5) A lessee who, with the agreement of the lessor, vacates land before the termination of a lease shall remain liable to pay rent and observe all the covenants in the lease for one year from the date on which the lessee vacates the land or buildings, unless the lease provides expressly for a shorter period, and if the lessor leases that land or any buildings to another person before the end of one year, the provisions of subsection (1) shall apply, with effect from the date of the execution of that lease.

(6) Subsection (1) shall not absolve a lessee to whom subsection (5) applies, from any obligation to pay rent or remedy a breach of a covenant that accrued or arose during the term of the lease when that lessee was bound by all the covenants in that lease and the lessor may enforce all such obligations of that lease that have accrued or arisen against that lessee notwithstanding the fact that the lessee has vacated the land.

(7) The provisions of subsections (1) and (5) shall apply in a similar manner to the transfer, or assignment of a lease of a part of the leased land and to the vacating of a part of the leased land as they apply to the transfer or assignment of the lease of all the land and the vacating of all the land comprised in the lease.

(8) Any term expressed or implied in a lease or in a condition or covenant in a lease that is in conflict with this section shall be void.

## **72. Transferor or assignee as lessee**

(1) A person who accepts a transfer or assignment of a lease shall become the lessee and shall be required to—

- (a) acknowledge the lessor as such;
- (b) take possession of the land or building that is the subject of the lease.

(2) A person to whom this section applies who becomes a lessee—

- (a) shall pay the lessor the rent payable under the lease;
- (b) shall observe and perform all the covenants on the part of the lessee expressed or implied in the lease; and
- (c) may enforce all covenants made by and binding on the lessor expressed or implied in the lease.

[Act No. 28 of 2016, s. 59.]

## ***Remedies and Relief***

### **73. Lessor's right of forfeiture**

(1) Subject to the provisions of section 76 and to any provisions to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee—

- (a) commits any breach of, or omits to perform, any agreement or condition on his part expressed or implied in the lease; or
- (b) is adjudicated bankrupt; or

(c) being a company, goes into liquidation.

(2) The right of forfeiture may be—

(a) exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land, by entering upon and remaining in possession of the land; or

(b) enforced by action in the court.

(3) The acceptance by the lessor of any rent after the service of a notice of forfeiture under section 75 does not operate as a waiver of the lessor's right of forfeiture unless the lessor has by any other positive act shown an intention to treat the lease as subsisting.

#### **74. Effect of forfeiture on subleases**

The forfeiture of a lease determines every sublease and every other interest appearing in the register relating to that lease, but—

(a) where the forfeiture is set aside by the court on the grounds that it was procured by the lessor in fraud of the sublessee; or

(b) where the court grants relief against the forfeiture under section 76, every such sublease and other interest shall be deemed not to have determined.

#### **75. Notice before forfeiture**

Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease, whether expressed or implied, until the lessor has served on the lessee a notice of not less than thirty days—

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and

(c) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach,

and the lessee has failed to remedy the breach within thirty days thereafter, if it is capable of remedy, and to make reasonable compensation in money.

#### **76. Relief against forfeiture**

(1) A lessee upon whom a notice has been served under section 75, or against whom the lessor is proceeding, by action or re-entry, to enforce his right of forfeiture, may apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if it grants relief, may grant it on such terms as it thinks fit.

(2) The court, on application by any person claiming as sublessee or chargee any interest in the property or part of the property comprised in the lease forfeited or sought to be forfeited, may make an order vesting the property or such part in such sublessee or chargee for the whole period of the lease or any less period, upon such conditions as the court in the circumstances of the case thinks fit:

Provided that nothing in this subsection shall apply in the case of a forfeiture arising from a breach to which the sublessee is a party, or from the breach of an express agreement or condition against subleasing, parting with the possession of or disposing of the property leased.

(3) This section shall have effect notwithstanding any stipulation or agreement to the contrary and whether the lease is registered or not.

#### **77. Unlawful eviction**

(1) A lessee who is evicted from the whole or a part of the leased land or buildings, contrary to the express or implied terms and conditions of a lease, shall be immediately relieved of all obligation to pay any rent or other monies due under the lease or perform any of the covenants and conditions on the part of the lessee expressed or implied in the lease in respect of the land or buildings or part thereof from which the lessee has been so evicted.

(2) For purposes of this section, a lessee shall be considered as having been evicted from the whole or part of the leased land or buildings, if, on the commencement of the lease, the lessee is unable to obtain possession of the land or buildings or part thereof, as a result of any action or non-action of the lessor or any of the lessor's agents or employees, contrary to the express or implied terms of the lease:

Provided that a lessee who is aggrieved as a result of unlawful eviction under this section may commence an action against the lessor for remedies.

### **PART VII – GENERAL PROVISIONS ON CHARGES**

#### **78. Application of Part to charges**

(1) This Part applies to all charges on land.

Provided that —

- (a) the provisions of this Part shall not be construed so as to affect the validity of any entry in the register or any charge, mortgage or other security instrument which was valid immediately before the commencement of this Act and the entries in the register and the charges, mortgages or other instruments shall continue to be valid in accordance with their terms notwithstanding their inconsistency with the provisions of this Part;
- (b) the provisions relating to the realization of any charge, mortgage or other instrument created before the commencement of this Act shall apply save for the requirement to serve notice to spouses and other persons who were not required to be served under the repealed Acts of Parliament.

(2) References in this Part to “the charged land” shall be taken to mean and include a charged land, a charged lease and sublease and a second or subsequent charge.

[Act No. 28 of 2016, s. 60.]

**79. Informal charges**

(1) An owner of private land or a lessee, by an instrument in the prescribed form, may charge the interest in the land or a part thereof for any purpose including but not limited to securing the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfilment of a condition.

(2) The power conferred by subsection (1) shall include the power to create second and subsequent charges.

(3) A charge of a matrimonial home, shall be valid only if any document or form used in applying for such a charge, or used to grant the charge, is executed by the chargor and any spouse of the chargor living in that matrimonial home, or there is evidence from the document that it has been assented to by all such persons.

(4) The power conferred by this section shall be exercisable subject to—

- (a) any prohibition or limitation imposed by this Act or any written law; and
- (b) any restriction contained in an instrument creating or affecting the interest in land that is to be the subject of a charge.

(5) A formal charge shall take effect only when it is registered in a land register and a chargee shall not be entitled to exercise any of the remedies under that charge unless it is so registered.

(6) An informal charge may be created where—

- (a) a chargee accepts a written and witnessed undertaking from a chargor, the clear intention of which is to charge the chargor's land or interest in land, with the repayment of money or money's worth, obtained from the chargee plus interest as agreed by the chargor and the chargee;
- (b) the chargor deposits any of the following—
  - (i) a certificate of title to the land;
  - (ii) a document of lease of land;
  - (iii) any other document which it is agreed evidences ownership of land or a right to interest in land.

(7) A chargee holding an informal charge may only take possession of or sell the land which is the subject of an informal charge, on obtaining an order of the court to that effect.

(8) An arrangement contemplated in subsection (6)(a) may be referred to as an "informal charge" and a deposit of documents contemplated in subsection (6)(b) shall be known and referred to as a "*lien* by deposit of documents."

(9) A chargor shall not possess or sell land whose title documents have been deposited by a chargee under an informal charge without an order of the court.

[Act No. 28 of 2016, s. 61.]

**80. Charge of land to take effect as security only**

(1) Upon the commencement of this Act, a charge shall have effect as a security only and shall not operate as a transfer of any interests or rights in the land from the chargor to the chargee but the chargee shall have, subject to the provisions of this Part, all the powers and remedies in case of default by the chargor and be subject to all the obligations that would be conferred or implied in a transfer of an interest in land subject to redemption.

(2) In the case of the charge of a lease, the chargee shall not be liable to the lessor for rent or in respect of the covenants and conditions contained or implied in the lease to any greater extent than would have been the case if the charge had been by way of a sublease.

(3) Every charge instrument shall contain—

- (a) the terms and conditions of sale;
- (b) an explanation of the consequences of default; and
- (c) the reliefs that the chargor is entitled to including the right of sale.

**81. Order of priority of charges**

(1) Unless otherwise provided in the charge instrument charges shall rank according to the order in which they are registered.

(2) Informal charges shall rank according to the order in which they are made provided that a registered informal charge shall take priority over any unregistered informal charge.

(3) If two informal charges are made on the same day or are registered on the same day, the charge which was first in time to be made or registered shall have priority.

(4) Unless otherwise provided in the charge instrument, if the chargee, holding a charge created subsequent in time to one in favour of a prior chargee, lends money or money's worth on the security of a charge to a chargor and it later transpires that a prior chargee or the chargor himself acted dishonestly or fraudulently in procuring the charge, the prior chargee's right to repayment under the charge shall be postponed to the rights of the subsequent chargee.

(5) The rules of priority for informal charges shall apply as far as the circumstances shall permit *liens* by deposit of documents.

[Act No. 28 of 2016, s. 62.]

**82. Tacking**

(1) Subject to the provisions of this Act, a chargee may make provision in the charge instrument to give further advances or credit to the chargor on a current or continuing account.

(2) A further advance referred to in subsection (1) shall not rank in priority to any subsequent charge unless—

- (a) the provision for further advances is noted in the register in which the charge is registered; or
- (b) the subsequent chargee has consented in writing to the priority of the further advance.

(3) Except as provided for in this section there is no right to tack.

(4) Where a charge provides for the payment for a principal sum by way of instalments, the payment of those instalments shall not be taken to be a further advance.

[Act No. 28 of 2016, s. 63.]

### **83. Consolidation**

(1) Unless there is an express provision to the contrary clearly set out in the charge instrument, a chargor who has more than one charge with a single chargee on several securities may discharge any of the charges without having to redeem all charges.

(2) A chargee who has made provision in accordance with subsection (1) for the consolidation of charges shall record that right in the register or registers against all the charges so consolidated that are registered.

(3) Upon commencement of this Act, the rules of equity applicable to consolidation shall not apply to charges.

### **84. Variation of charge**

(1) Where it was contractually agreed upon that the rate of interest is variable, the rate of interest payable under a charge may be reduced or increased by a written notice served on the chargor by the chargee—

- (a) giving the chargor at least thirty days notice of the reduction or increase in the rate of interest; and
- (b) stating clearly and in a manner that can be readily understood, the new rate of interest to be paid in respect of the charge.

(2) The amount secured by a charge may be reduced or increased by a memorandum which shall—

- (a) comply with subsection (5); and
- (b) be signed—
  - (i) in the case of a memorandum of reduction by the chargee; or
  - (ii) by the chargor; and
- (c) state that the principal funds intended to be secured by the charge are reduced or increased as the case may be, to the amount or in the manner specified in the memorandum.

(3) The term of a charge may be reduced, extended or renewed by a memorandum which—

- (a) complies with subsection (5);
- (b) is signed by the chargor and the chargee; and
- (c) states that the term of the charge has been reduced, extended or renewed, as the case may be, to the date or in the manner specified in the memorandum.

(4) The covenants, conditions and powers expressed or implied in a charge are varied in the manner specified in the memorandum.

(5) A memorandum for the purposes of subsections (2), (3) and (4) shall—

- (a) be endorsed on the register or annexed to the charge instrument; and
- (b) upon endorsement or being annexed to the charge instrument, vary the charge in accordance with the terms of the memorandum.

[Act No. 28 of 2016, s. 64.]

**85. Right to discharge**

(1) Subject to the provisions of this section, the chargor shall, upon payment of all money secured by a charge and the performance of all other conditions and obligations under the charge, be entitled to discharge the charge at any time before the charged land has been sold by the chargee or a receiver under the power of sale.

(2) Any agreement or provision in a charge instrument that is inconsistent with subsection (1) shall be void to the extent that it—

- (a) purports to deprive the chargor of the right to discharge;
- (b) seeks to fetter the exercise of this right; or
- (c) stipulates for a collateral advantage that is unfair and unconscionable or inconsistent with the right to discharge.

(3) A chargee may provide, in a charge instrument, that a chargor who wishes to exercise the right to discharge the charge at any time before the expiry of the term of the charge—

- (a) shall give one month's notice of the intention to discharge; or
- (b) shall pay not more than one month's interest at the rate at which interest is payable on the principal sum secured by the charge or at any lesser rate which may be agreed, as well as paying all other money secured by the charge.

(4) A discharge of the whole or a part of a charge shall be as prescribed under this Act or any other law.

(5) For the avoidance of doubt, a discharge includes a re-conveyance and a re-assignment of charge or any other instrument used in extinguishing of interests in land conferred by charges.

**86. Transfer of charge**

(1) A chargor or any person referred to in subsection (2) may, at any time, other than a time when the chargee is in possession of the charged land, in writing, request the chargee to transfer the charge to a person named in the request.

(2) Subject to the consent of the chargor which shall not be unreasonably withheld, the other persons who may make a written request under subsection (1) are—

- (a) any person who has an interest in the land, lease or land, that is the subject of the charge;
- (b) any surety for the payment of the amount secured by the charge; and
- (c) any creditor of the chargor who has obtained a decree for sale of the land, lease or charge, that is the subject of the charge.

(3) The charge shall, on receiving a written request made under subsection (1) and on payment by the person or persons making the request of all money that would have been payable if discharge of the charge had been made under section 102, and the performance of all other obligations secured by the charge, transfer the charge to the person named in the written request.



**87. Chargee's consent to transfer**

If a charge contains a condition, express or implied that chargee prohibits the chargor from, transferring, assigning, leasing, or in the case of a lease, subleasing the land, without the consent of the chargee, no transfer, assignment, lease or sublease shall be registered until the written consent of the chargee has been produced to the Registrar.

[Act No. 28 of 2016, s. 65.]

***Covenants, Conditions and Powers Implied in Charges*****88. Implied covenant by the chargor**

(1) There shall be implied in every charge covenants by the chargor with the chargee binding the chargor—

- (a) to pay the principal money on the day appointed in the charge agreement, and, so long as any of the principal money or any part thereof remains unpaid, to pay interest on the money thereon or on so much of the money that for the time being remains unpaid at the rate and on the days and in the manner specified in charge agreement;
- (b) to pay all rates, charges, rent, taxes and other outgoings that are at all times payable in respect of the charged land;
- (c) to repair and keep in repair all buildings and other improvements upon the charged land or to permit the chargee or chargee's agent to enter the land and examine the state and condition of such buildings and improvements after a seven days notice to the chargor until the charge is discharged;
- (d) to ensure by insurance or any other means that may be prescribed or which are appropriate, that resources will be available to make good any loss or damage caused by fire to any building on the land, and where insurance is taken out, it is done so in the joint names of the chargor and chargee with insurers approved by the chargee and to the full value of all the buildings;
- (e) in the case of a charge of land used for agricultural purposes, to use the land in a sustainable manner in accordance with the principles and any conditions subject to which the land or lease under which the land is held, and in compliance with all written laws and lawful orders applicable to that use of the land;
- (f) not to lease or sublease the charged land or any part of it for any period longer than a year without the previous consent in writing of the chargee, which consent shall not be unreasonably withheld;
- (g) not to transfer or assign the land or lease or part of it without the previous consent in writing of the chargee which consent shall not be unreasonably withheld;
- (h) in the case of a charge of a lease, during the continuance of the charge, to pay, perform and observe the rent, covenants and conditions contained in or implied by and in the lease contained and implied and on the part of the lessee to be paid, performed and observed and to keep the chargee indemnified against all proceedings, expenses and claims on account of non-payment any part of the rent or part of it or the breach or non-observance of any

covenants and conditions referred to above, and, if the lessee has an enforceable right to renew the lease, to renew it;

- (i) if the charge is a second or subsequent charge, that the chargor will pay the interest from time to time accruing on each prior charge when it becomes due and will at the proper time repay the principal money or part of it due on each prior charge at the proper time;
- (j) if the chargor fails to comply with any of the covenants implied by paragraphs (b), (c), (d), (e) and (h) of this subsection, that the chargee may spend any money which is reasonably necessary to remedy the breach and may add the amount so spent to the principal money and that amount shall be deemed for all purposes to be a part of the principal money secured by the charge.

(2) Reference to the obligation of the chargor in subsection (1)(b) to keep all buildings upon the charged land in repair shall be taken to be an obligation to keep such buildings in a reasonable state of repair as set out in section 65.

(3) The provisions of section 66 shall apply to an application by a chargor to a chargee for consent under paragraphs (f) and (g) of subsection (1).

[Act No. 28 of 2016, s. 66.]

### **89. Equity redemption**

(1) Any rule of law, written or unwritten, entitling a chargee to foreclose the equity of redemption in charged land is prohibited.

(2) Upon commencement of this Act, a chargee shall not be entitled to enter into possession of the charged land or a charged lease or to receive the rents and profits of that land or lease by reason only that default has been made in the payment of the principal sum or of any interest or other periodic payment or of any part thereof or in the performance or observance of any agreement expressed or implied in the charge, other than in accordance with the provisions of this Act.

### **90. Remedies of a chargee**

(1) If a chargor is in default of any obligation, fails to pay interest or any other periodic payment or any part thereof due under any charge or in the performance or observation of any covenant, express or implied, in any charge, and continues to be in default for one month, the chargee may serve on the chargor a notice, in writing, to pay the money owing or to perform and observe the agreement as the case may be.

(2) The notice required by subsection (1) shall adequately inform the recipient of the following matters—

- (a) the nature and extent of the default by the chargor;
- (b) if the default consists of the non-payment of any money due under the charge, the amount that must be paid to rectify the default and the time, being not less than three months, by the end of which the payment in default must have been completed;
- (c) if the default consists of the failure to perform or observe any covenant, express or implied, in the charge, the thing the chargor must do or desist from doing so as to rectify the default and the time, being not less than two months, by the end of which the default must have been rectified;

- (d) the consequence that if the default is not rectified within the time specified in the notice, the chargee will proceed to exercise any of the remedies referred to in this section in accordance with the procedures provided for in this sub-part; and
- (e) the right of the chargor in respect of certain remedies to apply to the court for relief against those remedies.

(3) If the chargor does not comply within ninety days after the date of service of the notice under, subsection (1), the chargee may—

- (a) sue the chargor for any money due and owing under the charge;
- (b) appoint a receiver of the income of the charged land;
- (c) lease the charged land, or if the charge is of a lease, sublease the land;
- (d) enter into possession of the charged land; or
- (e) sell the charged land;

(4) If the charge is a charge of land held for customary land, or community land shall be valid only if the charge is done with concurrence of members of the family or community the chargee may—

- (a) appoint a receiver of the income of the charged land;
- (b) apply to the court for an order to—
  - (i) lease the charged land or if the charge is of a lease, sublease the land or enter into possession of the charged land;
  - (ii) sell the charged land to any person or group of persons referred to in the law relating to community land.

(5) The Cabinet Secretary shall, in consultation with the Commission, prescribe the form and content of a notice to be served under this section.

[Act No. 28 of 2016, s. 67.]

#### **91. Chargee's action for money secured by charge**

(1) The chargee may sue for the money secured by the charge only if—

- (a) the chargor is personally bound to repay the money;
- (b) by any cause other than the wrongful act of the chargor or chargee, the security is rendered insufficient and the chargee has given the chargor a reasonable opportunity to provide additional sufficient security and the chargor has failed to provide that additional security; or
- (c) the chargee is deprived of the whole or part of the security through or in consequence of, a wrongful act or default of the chargor.

(2) The court may order the postponement of any proceedings brought under subsection (1) (c) of this section until the chargee has exhausted all other remedies relating to the charged land, unless the chargee agrees to discharge the charge.

[Act No. 28 of 2016, s. 68.]

**92. Appointment, powers, remuneration and duties of the receiver**

(1) It shall be an implied condition in every charge that the chargee shall have the power to appoint a receiver of the income of the charged land.

(2) Before appointing a receiver under this section, the chargee shall serve a notice in the prescribed form on the chargor and shall not proceed with the appointment until a period of thirty days, from the date of the service of that notice, has elapsed.

(3) A chargee shall appoint a receiver, in writing, and the chargee shall sign the instrument of appointment.

(4) A receiver may, at any time, be removed and a new receiver appointed, in writing, by the chargee.

(5) A receiver appointed under this section shall be deemed to be the agent of the chargor for the purposes for which the receiver is appointed, and the chargor shall, unless the charge instrument provides otherwise, be solely responsible for the acts and defaults of the receiver.

(6) The receiver shall have the power to demand and recover all the income of which the receiver is appointed, by action or otherwise, in the name of the chargor, and to give effectual receipts for the same.

(7) The receiver shall be entitled to retain, out of any money received, all costs, charges and expenses incurred by the receiver and, for a commission at the rate specified in the appointment, but not exceeding five per centum of the gross amount of all money, received, or, if no rate is so specified at the rate of five per centum or any other rate as the chargor and chargee may agree or if the appointment of a receiver comes before the court, which the court considers fit.

(8) The receiver shall apply all money received in the following order of priority

- 
- (a) first, in the payment of all rents, rates, charges, taxes and other outgoings required to be paid in respect of the charged property;
  - (b) second, in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the charge of which the receiver is appointed;
  - (c) third, in payment of the receiver's commission and expenses;
  - (d) fourth, in payment of all reasonable expenses incurred in the doing of anything that a receiver is required or entitled to do in respect of the charged land, including but not limited to—
    - (i) the payment of any premiums on any insurance policy properly payable under the charge instrument; and
    - (ii) the costs of undertaking necessary and proper repairs to any buildings comprised in the charged land as directed in writing by the chargee.
  - (e) fifth, in the repayment of any money paid or advanced by the chargee to meet the reasonable expenses referred to in paragraphs (a), (b), (c) and (d) together with any interest on any amount so paid or advanced at the rate at which interest is payable on the principal sum secured by the charge;
  - (f) sixth, in payment of the interest accruing due in respect of any principal sum secured by the charge;

- (g) seventh, in and towards the discharge of the principal sum secured by the charge, and payment of the residue, if any, to the chargor or other person entitled to the charged land.

[Act No 28 of 2016, s. 69.]

### **93. Chargee's power of leasing**

(1) Unless the charge instrument expressly provides to the contrary, a chargee who has appointed a receiver under section 92, shall, have power, subject to the provisions of this Act and any other laws applicable to the leases of land—

- (a) to grant leases in respect of the charged land or any part thereof; and
- (b) to accept a surrender of any lease so granted and of any lease granted by the chargor,

and, for that purpose may, execute, in place of the chargor any instrument required to execute that lease or surrender in place of the chargor.

(2) Before granting a lease under this section, a chargee shall serve a notice on the chargor in the prescribed form and shall not proceed with the granting or execution of that lease until thirty days have elapsed from the service of that notice.

(3) Every lease granted by the chargee shall—

- (a) be made to take effect not later than six months after its date;
- (b) reserve the best rent that can reasonably be obtained in the circumstances;
- (c) be for a term not exceeding fifteen years or the length of the term of the charge whichever is the shorter subject to the provisions of subsection (5)(a);
- (d) contain any reasonable terms and conditions, having regard to the interests of the chargor and of any other persons having an interest in the charged land; and
- (e) contain a declaration that the chargee has appointed a receiver, with the date of the appointment.

(4) A lease created by a chargee under this section shall not be binding on any person holding, and shall not take priority over, any charge that has priority to the charge of the chargee who has granted the lease.

(5) The provisions of this section shall only apply to a receiver of income appointed under this section and not to receivers appointed under any other instrument to which the chargor may be subject.

[Act No. 28 of 2016, s. 70.]

### **94. Power of the chargee to take possession of the charged land**

(1) Upon expiry of the period specified in section 90(2)(b) and (c), a chargee may serve on the chargor a notice of intention to enter, in the prescribed form, notifying the chargor that the chargee intends to enter into possession of the whole or a part of the charged land at a date that is at least one month from the date of the service of the notice.

(2) A chargee may exercise the power of entry peaceably or by use of reasonable force—

- (a) entering into and taking physical possession of the land or a part of it peaceably and without committing any forcible entry; or

- (b) asserting management or control over the land by serving a notice in the prescribed form requiring any lessee of the chargor or any other owner of the land to pay to the chargee any rent or profits that would otherwise be payable to the chargor.

Provided that this power of entry shall only be exercised after obtaining a court order.

- (3) The chargee shall be regarded as being in possession on the date—

- (a) on which the chargee enters into possession in accordance with of subsection (2)(a); or
- (b) on which the chargee first receives any rent or profit from the land.

- (4) A chargee who has entered into possession may remain in possession.

(5) A chargee in possession shall be bound by all those covenants set out in of section 88(1)(a) to (e), (h), (i) and (j) as if that chargee were the chargor referred to in that subsection.

- (6) A chargee in possession of any charged land—

- (a) by occupation, shall be entitled to manage the land and take all its profits, but shall be liable to the chargor for any act by which the value of the land, or any buildings on, or other permanent improvements to the land are impaired or the chargor otherwise suffers loss;
- (b) whether by occupation or by receipt of rents and profits shall be accountable to the chargor not only for the sums actually received, but also for any additional sums that the chargee might reasonably have been expected to receive by the careful and business like exercise of the chargee's powers;
- (c) may renew a lease granted by the chargor on the same terms as the original lease but may not otherwise grant any lease out of the charged land.

(7) A chargee in possession shall apply all money to the same payments and in the same order as applies to a receiver as set out in section 92(8), except that a chargee in possession shall not be entitled to receive any payments under paragraph (c) of that subsection.

(8) Any person on whom a notice under subsections (1) or (2) has been served shall forthwith comply and continue to comply with that notice until either—

- (a) a notice of withdrawal in the prescribed form is served on that person by the chargee in possession; or
- (b) the chargee in possession withdraws from that possession; or
- (c) a court orders the chargee in possession to withdraw from possession.

[Act No. 28 of 2016, s. 71.]

## **95. Withdrawal of lender from possession**

(1) A chargee may, not sooner than one month after the service of a notice of withdrawal, serve in the prescribed form on the chargor and on all persons served with a notice under section 94(1) and (2), withdraw from possession of the charged land.

- (2) A chargee shall withdraw from possession of the charged land if—

- (a) a court makes an order directing the chargee to withdraw;

- (b) the chargee appoints a receiver under section 90(3);
- (c) the default which was the cause of the entry into possession has been rectified through the possession of the chargee;
- (d) the chargee has exercised the power of sale under section 96; or
- (e) the chargor has discharged all liabilities under the charge.

(3) A chargee in possession shall be taken to have withdrawn from possession of all or a part of the charged land in any case provided for—

- (a) by subsection (2)(a), when the order of the court is made;
- (b) by subsection (2)(b), when the receiver has been appointed in accordance with section 104;
- (c) by subsection (2)(c), when the chargee—
  - (i) has ceased to occupy the charged land; or
  - (ii) is not in occupation, and has served a notice of withdrawal on all persons served with a notice under section 96(1) and (2) or section 97;
- (d) by subsection (2)(d), when the purchaser of the charged land enters into occupation of that land; or
- (e) by subsection (2)(e), when the chargor serves notice of cancellation of possession in the prescribed form.

(4) A chargee who has withdrawn from possession of charged land may not again enter into possession of that land, otherwise than by complying with the provisions of section 94 if the chargor is in a fresh default under the charge.

[Act No. 28 of 2016, s. 72.]

#### **96. Chargee's power of sale**

(1) Where a chargor is in default of the obligations under a charge and remains in default at the expiry of the time provided for the rectification of that default in the notice served on the chargor under section 90(1), a chargee may exercise the power to sell the charged land.

(2) Before exercising the power to sell the charged land, the chargee shall serve on the chargor a notice to sell in the prescribed form and shall not proceed to complete any contract for the sale of the charged land until at least forty days have elapsed from the date of the service of that notice to sell.

(3) A copy of the notice to sell served in accordance with subsection (2) shall be served on—

- (a) the Commission, if the charged land is public land;
- (b) the holder of the land out of which the lease has been granted, if the charged land is a lease;
- (c) a spouse of the chargor who had given the consent;
- (e) any lessee and sublessee of the charged land or of any buildings on the charged land;
- (f) any person who is a co-owner with the chargor;
- (g) any other chargee of money secured by a charge on the charged land of whom the chargee proposing to exercise the power of sale has actual notice;
- (h) any guarantor of the money advanced under the charge;

- (i) any other person known to have a right to enter on and use the land or the natural resources in, on, or under the charged land by affixing a notice at the property; and
- (j) any other persons as may be prescribed by regulations, and shall be posted in a prominent place at or as near as may be to the charged land. A chargee who has withdrawn from possession of charged land may not again enter into possession of that land, otherwise than by complying with the provisions of section 94 if the chargor is in a fresh default under the charge.

[Act No. 28 of 2016, s. 73.]

#### **97. Duty of chargee exercising power of sale**

(1) A chargee who exercises a power to sell the charged land, including the exercise of the power to sell in pursuance of an order of a court, owes a duty of care to the chargor, any guarantor of the whole or any part of the sums advanced to the chargor, any chargee under a subsequent charge or under a *lien* to obtain the best price reasonably obtainable at the time of sale.

(2) A chargee shall, before exercising the right of sale, ensure that a forced sale valuation is undertaken by a valuer.

(3) If the price at which the charged land is sold is twenty-five per centum or below the market value at which comparable interests in land of the same character and quality are being sold in the open market—

- (a) there shall be a rebuttable presumption that the chargee is in breach of the duty imposed by subsection (1); and
- (b) the chargor whose charged land is being sold for that price may apply to a court for an order that the sale be declared void, but the fact that a plot of charged land is sold by the chargee at an undervalue being less than twenty-five per centum below the market value shall not be taken to mean that the chargee has complied with the duty imposed by subsection (1).

(4) It shall not be a defence to proceedings against a chargee for breach of the duty imposed by subsection (1) that the chargee was acting as agent of or under a power of attorney from the chargor or any former chargor.

(5) A chargee shall not be entitled to any compensation or indemnity from the chargor, any former chargor or any guarantor in respect of any liability arising from a breach of the duty imposed by subsection (1).

(6) The sale by a prescribed chargee of any community land occupied by a person shall conform to the law relating to community land save that such a sale shall not require any approval from a Community Land Committee.

(7) Any attempt by a chargee to exclude all or any of the provisions of this section in any charge instrument or any agreement collateral to a charge or in any other way shall be void.

#### **98. Powers incidental to the power of sale**

(1) If a chargee or a receiver becomes entitled to exercise the power of sale, that sale may be—

- (a) of the whole or part of the charged land;
- (b) subject to or free of any charge or other encumbrance or charge having priority to the chargee's charge;



- (c) by way of subdivision or otherwise;
- (d) by private contract at market value;
- (e) public auction with reserve price;
- (f) for a purchase price payable in one sum or by instalments; or
- (g) subject to any other conditions that the chargee shall think fit, having due regard to the duty imposed by section 97(1).

(2) If a sale is to proceed by public auction, it shall be the duty of the chargee to ensure that the sale is publicly advertised in such a manner and form as to bring it to the attention of persons likely to be interested in bidding for the charged land and that the provisions relating to auctions and tenders for land are, as near as may be, followed in respect of that sale.

(3) A transfer of the charged land by a chargee in exercise of the power of sale shall be made in the prescribed form and the Registrar shall accept it as sufficient evidence that the power has been duly exercised.

(4) Upon registration of the land or lease or other interest in land sold and transferred by the chargee the interest of the chargor as described therein shall pass to and vest in the purchaser free of all liability on account of the charge, or on account of any other charge or encumbrance to which the charge has priority, other than a lease easement to which the chargee had consented in writing.

(5) In a sale by a private contract, the chargee shall be entitled to rely on a valuation carried out by a valuer who is registered with the institute of Surveyors of Kenya and the report shall in the absence of a manifest error, be conclusive in relation to the market price:

Provided that the valuation report shall at the time of sale be not more than six months old.

(6) A transfer by charge shall have priority over all entries made after the transfer of the charge undertaking the sale and the chargee shall stand discharged upon the registration of the transfer.

(7) Where it is noted in the register that a second charge by the chargor ranks *pari passu* to the charge submitting the transfer, the instrument of transfer by the charge shall include a duly executed consent of the charge with a *pari passu* charge consenting to the sale.

(8) For the purposes of this section, land, a lease, or a charge shall be deemed to have been sold when a bid has been accepted at the auction sale.

(9) If at any time the charger is entitled to and wishes to repay the money secured by the charge, and the charge is absent, cannot be found or if the registrar is satisfied that the charge cannot be discharged otherwise, the chargor may deposit the amount due with the Court, in trust, for the person entitled to the money, and after which the obligations of the charger under the charge shall cease.

(10) Upon the deposit referred to in subsection (9), the Registrar shall cancel the registration of the charge and the Court shall pay the amount deposited to the chargee if the charge applies for it within six years of the deposit, and where the chargee does not apply for the amount within the stated period, it shall be deposited with the Unclaimed Financial Assets Authority as an unclaimed asset.

[Act No. 28 of 2016, s. 74.]

## **99. Protection of purchaser**

- (1) This section applies to—

- (a) a person who purchases charged land from the chargee or receiver, except where the chargee is the purchaser; or
  - (b) a person claiming the charged land through the person who purchases charged land from the chargee or receiver, including a person claiming through the chargee if the chargee and the person so claiming obtained the charged land in good faith and for value.
- (2) A person to whom this section applies—
- (a) is not answerable for the loss, misapplication or non-application of the purchase money paid for the charged land;
  - (b) is not obliged to see to the application of the purchase price;
  - (c) is not obliged to inquire whether there has been a default by the chargor or whether any notice required to be given in connection with the exercise of the power of sale has been duly given or whether the sale is otherwise necessary, proper or regular.

(3) A person to whom this section applies is protected even if at any time before the completion of the sale, the person has actual notice that there has not been a default by the chargor, or that a notice has been duly served or that the sale is in some way, unnecessary, improper or irregular, except in the case of fraud, misrepresentation or other dishonest conduct on the part of the chargee, of which that person has actual or constructive notice.

(4) A person prejudiced by an unauthorised, improper or irregular exercise of the power of sale shall have a remedy in damages against the person exercising that power.

#### **100. Purchase by chargee**

(1) Other than in the circumstances provided for in subsection (3), a chargee exercising the power of sale may, with leave of the Court, purchase the property.

(2) A court shall not grant leave unless the chargee satisfies the court that a sale of the charged land to the chargee is the most advantageous way of selling the land so as to comply with the duty imposed on the chargee by section 97(1).

(3) If the charged land is to be sold by public auction, the chargee may bid for and purchase the charged land at that public auction so long as the price bid for the charged land by the chargee is the greater of—

- (a) the highest price bid for that land at the auction; and
- (b) an amount equal to or higher than the reserve price, if any, put upon the land before the auction, whichever amount is the greater.

(4) If a chargee who has sold charged land to the chargee applies to the Registrar to be registered as the lawful owner of land under a land or lease, the Registrar may require that chargee to provide any evidence that the Registrar may specify showing that the provisions of this section have been complied with and the Registrar shall not be obliged to register any such land or lease until the chargee has so satisfied the Registrar.

#### **101. Application of proceeds of sale of charged land**

The purchase money received by a chargee who has exercised the power of sale shall be applied in the following order of priority—

- (a) first, in payment of any rates, rents, taxes, charges or other sums owing and required to be paid on the charged land;

- (b) second, in discharge of any prior charge or other encumbrance subject to which the sale was made;
- (c) third, in payment of all costs and reasonable expenses properly incurred and incidental to the sale or any attempted sale;
- (d) fourth, in discharge of the sum advanced under the charge or so much of it as remains outstanding, interests, costs and all other money due under the charge, including any money advanced to a receiver in respect of the charged land under section 92; and
- (e) fifth, in payment of any subsequent charges in order of their priority, and the residue, if any, of the money so received shall be paid to the person who, immediately before the sale, was entitled to discharge the charge.

**102. Right of chargor to discharge charge on payment of any sum due any time before sale**

(1) At any time before the charged land is sold, or withdrawn from sale, the chargor or any other person entitled to discharge the charge may discharge the charge in whole or in part by paying to the chargee all money secured by the charge at the time of payment.

(2) If payment is made under subsection (1), the chargee shall deliver to the chargor—

- (a) a discharge of the charge in the prescribed form over the whole or that part of the charged land to which the payment relates; and
- (b) all instruments and documents of title held by the chargee in connection with the charged land.

**103. Application for relief by chargor**

(1) An application for relief against the exercise by the chargee of any of the remedies referred to in section 90 (3) may be made by—

- (a) the chargor;
- (b) if two or more persons are joint chargors, by one or more of them on their own behalf;
- (c) a spouse of the chargor to the extent that the spouse was required to give consent to the creation of the charge but did not give consent;
- (d) *deleted by Act No. 28 of 2016, s. 75;*
- (e) if the chargor has been adjudged bankrupt, the bankruptcy trustee of the estate of the charger.

(2) If an application made in accordance subsection (1)(b) is not made by all the joint chargors, then, unless the court orders otherwise, it must be served on all the joint chargors.

(3) An application for relief may be made at any time after the service of a notice under section 90(1), section 91(2), section 94(1), section 95(1), or during the exercise of any of the remedies contemplated in those sections.

(4) An application for relief is not to be taken as an admission by the chargor or any other person applying for relief that—

- (a) there has been a breach of a covenant of the charge by the chargor;
- (b) by reason of such a breach, the chargee has the right to exercise the remedy in respect of which the application for relief has been made;

- (c) all notices that were required to be served by the chargee were properly served; or
  - (d) the period for remedying the breach specified in the notice served under section 90 was reasonable or had expired,
- and the court may grant relief without determining all or any of the matters described in paragraphs (a), (b), (c) or (d).

[Act No. 28 of 2016, s. 75, Act No. 19 of 2015, s. 178.]

#### **104. Power of the court in respect of remedies and reliefs**

(1) In considering whether to grant relief as applied for, a court—

- (a) shall, have regard to whether the remedy which the chargee proposes to exercise is reasonably necessary to prevent any or any further reduction in the value of the charged land or to reverse any such reduction as has already occurred if the charged land consists of agricultural land or commercial premises, and the remedy proposed is to appoint a receiver, or to take possession of or lease the land or a part thereof;
- (b) shall, where the charged land consists of or includes, a dwelling-house, and the remedy proposed is to appoint a receiver, or take possession or lease the dwelling house or a part of it, have regard to the effect that the appointment of a receiver or the taking of possession or leasing the whole or a part of the dwelling house would have on the occupation of the dwelling house by the chargor and dependants and if the effect would be to impose undue disturbance on those owners, whether it is satisfied that—
  - (i) the chargee has made all reasonable efforts, including the use of other available remedies, to induce the chargor to comply with the obligations under the charge; and
  - (ii) the chargor has persistently been in default of the obligations under the charge; and
  - (iii) if the sale is of land held for a customary land, the chargee has had regard to the age, means, and circumstance including the health and number of dependants of the chargor, and in particular whether—
    - (aa) the chargor will be rendered landless or homeless;
    - (bb) the chargor will have any alternative means of providing for the chargor and dependants;
  - (iv) it is necessary to sell the charged land in order to enable the chargee to recover the money owing under the charge;
  - (v) in all the circumstances, it is reasonable to approve, or as the case may be, to make the order to sell the charged land.

(2) A court may refuse to grant an order under subsection (1) or may grant any relief against the operation of a remedy that the circumstances of the case require and without limiting the generality of those powers, may—

- (a) cancel, vary, suspend or postpone the order for any period which the court thinks reasonable;

- (b) extend the period of time for compliance by the chargor with a notice served under section 90;
- (c) substitute a different remedy or the one applied for or proposed by the chargee or a different time for taking or desisting from taking any action specified by the lessor in a notice served under section 90;
- (d) authorise or approve the remedy applied for or proposed by the chargee, notwithstanding that some procedural errors took place during the making of any notices served in connection with that remedy if the court is satisfied that—
  - (i) the chargor or other person applying for relief was made fully aware of the action required to be taken under or in connection with the remedy; and
  - (ii) no injustice will be done by authorising or approving the remedy, and may authorise or approve that remedy on any conditions as to expenses, damages, compensation or any other relevant matter as the court thinks fit.

(3) If under the terms of a charge, the chargor is entitled or is to be permitted to pay the principal sum secured by the charge by instalments or otherwise to defer payment of it in whole or in part but provision is also made in the charge instrument or any collateral agreement for earlier payment of the whole sum in the event of any default by the chargor or of a demand by the chargee or otherwise, then for purposes of this section the court may treat as due under the charge in respect of the principal sum secured and of interest on it only the amounts that the chargor would have expected to be required to pay if there had been no such provision for earlier payment.

(4) A court may at any time before the charged property is sold refuse to authorise or approve a remedy if it appears to the court that—

- (a) the default in issue has been remedied;
- (b) the threat to the security has been removed;
- (c) the chargor has taken the steps that the chargor was required to take by the notice served under section 90; and
- (d) the chargee has taken or attempted to take some action against the chargor in contravention of section 90(4).

[Act No. 28 of 2016, s. 76.]

#### **105. Power of the court to re-open certain charges and revise terms**

(1) The Court may reopen a charge of whatever amount secured on a matrimonial home, in the interests of doing justice between the parties.

#### **106. Exercise of power to re-open certain charges**

- (1) The court may exercise the powers conferred on it by this Act either—
  - (a) on an application made to it for that purpose by either the chargor or the chargee—
    - (i) to enforce the charge; or
    - (ii) to commence an action under section 90; or
  - (b) on an application by the chargor for relief against the exercise by the chargee of any remedy in connection with a default by the chargor under a charge; or

- (c) on an application by the Registrar in respect of—
  - (i) charges provided by one or more specific chargees where there is *prima facie* evidence of a pattern of unfair dealing and practices by that chargee or those chargees; or
  - (ii) a chargee, being a corporate body, that appears to exercise discrimination against chargors on account of their gender, or by refusing to grant charges to persons on account of their gender except that a chargee, being a corporate body that is implementing any programme, approved or assisted by the national or county governments, designed to assist women to improve their economic and social position by providing them with advances secured by a charge of land shall not be taken to be acting in discriminatory manner if the advances under that programme are made only to women.

(2) In re-opening the charge, the court may—

- (a) direct that the charge shall have effect subject to modifications that the court shall order;
- (b) require the chargee to repay the whole or part of any sum paid under the charge or any related or collateral agreement by the chargor or any guarantor or other person who assumed an obligation under the charge whether it was paid to the chargee or any other person;
- (c) require the chargee to pay any compensation to the chargor which the court shall think fit; or
- (d) direct the chargee, being a corporate body to cease acting in a discriminatory manner with respect to the granting of charges.

(3) In considering whether to exercise the powers conferred on it by this section, the court shall have regard to—

- (a) the age, gender, experience, understanding of commercial transaction, and health of the chargor at the time when the charge was created, if the chargor is an individual;
- (b) the financial standing and resources of the chargor relative to those of the chargee at the time of the creation of the charge;
- (c) the degree to which, at the time of the creation of the charge, the chargor was under financial pressure and the nature of that pressure;
- (d) the interest rates prevailing at the time of the creation of the charge and during the continuation of the charge and the relationship of those interest rates to the interest rate applying from time to time in the charge;
- (e) the degree of risk accepted by the chargee, having regard to the value of the charged land and the financial standing and other resources of the chargor;
- (f) the importance of not undermining the confidence of reputable chargees in the market for charges; and
- (g) any other factors that the court considers relevant.

## PART VIII – COMPULSORY ACQUISITION OF INTERESTS IN LAND

**107. Preliminary notice**

(1) Whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110, the respective Cabinet Secretary or the County Executive Committee Member shall submit a request for acquisition of land to the Commission to acquire the land on its behalf.

(2) The Commission shall prescribe a criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land.

(3) The Commission may reject a request of an acquiring authority, to undertake an acquisition if it establishes that the request does not meet the requirements prescribed under subsection (2) and Article 40(3) of the Constitution.

(4) In the event that the Commission has not undertaken the acquisition in accordance with subsection (3) for the reasons stated in subsection (3) within thirty days, it shall give to the acquiring authority the reasons for the decline and the conditions that must be met.

(5) Upon approval of a request under subsection (1), the Commission shall publish a notice to that effect in the *Gazette* and the county *Gazette*, and shall deliver a copy of the notice to the Registrar and every person who appears to the Commission to be interested in the land.

(6) Upon service of the notice, the registrar shall make an entry in the register of the intended acquisition.

(7) For the purposes of sections 107 to 133, interested persons shall include any person whose interests appear in the land registry and the spouse or spouses of any such person, as well as any person actually occupying the land and the spouse or spouses of such person.

(8) All land to be compulsorily acquired shall be geo-referenced and authenticated by the office or authority responsible for survey at both the national and county government.

[Act No. 28 of 2016, s. 77.]

**108. Power of entry to inspect land**

(1) The Commission may authorize, in writing, any person, to enter upon any land specified in a notice published under section 107 and inspect the land and to do all things that may be reasonably necessary to ascertain whether the land is suitable for the intended purpose.

(2) An authorization under subsection (1) shall not empower a person to enter a building, or an enclosed court or garden attached to a dwelling house, unless that person—

- (a) has first obtained the consent of the occupier; or
- (b) has served on the occupier a not less than seven days written notice of the intention to enter.

**109. Payment for damage caused by entry for inspection**

As soon as practicable after entry has been made under section 108, the Commission shall promptly pay in full, just compensation for any damage resulting from the entry.

**110. Notice of acquisition and effect of acquisition on plant and machinery**

(1) Land may be acquired compulsorily under this Part if the Commission certifies, in writing, that the land is required for public purposes or in the public interest as related to and necessary for fulfilment of the stated public purpose.

(2) If, after land has been compulsorily acquired the public purpose or interest justifying the compulsory acquisition fails or ceases, the Commission may offer the original owners or their successors in title pre-emptive rights to re-acquire the land, upon restitution to the acquiring authority the full amount paid as compensation.

(3) If any plant or machinery is attached or permanently fastened to the land, the person interested in that plant or machinery may serve on the Commission a notice in writing that such person desires to sever and remove the plant or machinery, after receiving the notice of intention to acquire the land under section 107(5), and not later than fifteen days before the inquiry appointed under section 112(1).

**111. Compensation to be paid**

(1) If land is acquired compulsorily under this Act, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined.

(1A) The acquiring body shall deposit with the Commission the compensation funds in addition to survey fees, registration fees, and any other costs before the acquisition is undertaken.

(2) The Commission shall make rules to regulate the assessment of just compensation.

[Act No. 28 of 2016, s. 78.]

**112. Inquiry as to compensation**

(1) At least thirty days after publishing the notice of intention to acquire land, the Commission shall appoint a date for an inquiry to hear issues of propriety and claims for compensation by persons interested in the land, and shall—

- (a) cause notice of the inquiry to be published in the *Gazette* or county *Gazette* at least fifteen days before the inquiry; and
- (b) serve a copy of the notice on every person who appears to the Commission to be interested or who claims to be interested in the land.

(2) The notice of inquiry shall call upon persons interested in the land to deliver a written claim of compensation to the Commission, not later than the date of the inquiry.

(3) At the hearing, the Commission shall—

- (a) make full inquiry into and determine who are the persons interested in the land; and
- (b) receive written claims of compensation from those interested in the land.

(4) The Commission may postpone an inquiry or adjourn the hearing of an inquiry from time to time for sufficient cause.

(5) For the purposes of an inquiry, the Commission shall have all the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel the production and delivery to the Commission of documents of title to the land.



(6) The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry.

### **113. Award of compensation**

(1) Upon the conclusion of the inquiry, the Commission shall prepare a written award, in which the Commission shall make a separate award of compensation for every person whom the Commission has determined to have an interest in the land.

(2) Subject to Article 40 (2) of the Constitution and section 122 and 128 of this Act, an award—

(a) shall be final and conclusive evidence of—

- (i) the size of the land to be acquired;
- (ii) the value, in the opinion of the Commission, of the land;
- (iii) the amount of the compensation payable, whether the persons interested in the land have or have not appeared at the inquiry; and

(b) shall not be invalidated by reason only of a discrepancy which may thereafter be found to exist between the area specified in the award and the actual area of the land.

(3) If an interest in land is held by two or more persons as co-tenants, the award shall state—

- (a) the amount of compensation awarded in respect of that interest; and
- (b) the shares in which it is payable to those persons.

(4) Every award shall be filed in the office of the Commission.

### **114. Notice of award**

(1) On making an award, the Commission shall serve on each person whom the Commission has determined to be interested in the land, a notice of the award and offer of compensation.

(2) Upon acquisition of land, and prior to taking possession of the land, the Commission may agree with the person who owned that land that instead of receiving an award, the person shall receive a grant of land, not exceeding in value the amount of compensation which the Commission considers would have been awarded, and upon the conclusion of the agreement that person shall be deemed to have conclusively been awarded and to have received all the compensation to which that person is entitled in respect of the interest in that land.

(3) An agreement under subsection (2) shall be recorded in the award.

### **115. Payment of compensation**

(1) After notice of an award has been served on all the persons determined to be interested in the land, the Commission shall, promptly pay compensation in accordance with the award to the persons entitled thereunder, except in a case where—

- (a) there is no person competent to receive payment; or
- (b) the person entitled does not consent to receive the amount awarded; or

- (c) there is a dispute as to the right of the persons entitled to receive the compensation or as to the shares in which the compensation is to be paid.

(2) In any of the cases referred to in paragraphs (a), (b) and (c) of subsection (1), the Commission may at any time pay the amount of the compensation into a special compensation account held by the Commission, notifying any persons interested accordingly.

#### **116. Payment in error**

If a person has received any money by way of compensation awarded for an interest in the land being acquired, either in error or before it has been established that some other person is rightfully entitled to the interest, the Commission may, by notice in writing served on that person, require that person to refund to the Commission the amount received, and the amount shall be a debt due from that person to the Commission.

#### **117. Payment of interest**

(1) If the amount of any compensation awarded is not paid, the Commission shall on or before the taking of possession of the land, open a special account into which the Commission shall pay interest on the amount awarded at the base lending rate set by the Central Bank of Kenya and prevailing at that time from the time of taking possession until the time of payment.

(2) If additional compensation is payable under section 119 there shall be added to the amount of the additional compensation interest thereon at the base lending rate set by the Central Bank of Kenya and prevailing at that time, from the time when possession was taken or compensation was paid, whichever is earlier.

[Act No. 28 of 2016, s. 79.]

#### **118. Final survey**

If part of the land comprised in documents of title has been acquired, the Commission shall, as soon as practicable, cause a final survey to be made of all the land acquired.

[Act No. 28 of 2016, s. 80.]

#### **119. Condition for payment of compensation**

Payment of compensation shall be made only upon the exercise of due diligence which shall include final survey and the determination of acreage, boundaries, ownership and value.

[Act No. 28 of 2016, s. 81.]

#### **120. Formal taking of possession**

(1) Only after the award has been made, and the amount of the first offer has been paid, the Commission shall take possession of the land by serving on every person interested in the land a notice that on a specified day possession of the land and the title to the land will vest in the national or county governments as the case may be.

(2) In cases of where there is an urgent necessity for the acquisition of land, and it would be contrary to the public interest for the acquisition to be delayed by following the normal procedures of compulsory acquisition under this Act, the Commission may take possession of uncultivated or pasture or arable land upon

the expiration of fifteen days from the date of publication of the notice of intention to acquire, and on the expiration of that time the Commission shall, notwithstanding that no award has been made, take possession of that land in the manner prescribed by subsection (1).

(3) Upon taking possession of land under subsection (1) or subsection (2), the Commission shall also serve upon—

- (a) the registered proprietor of the land; and
- (b) the Registrar, a notice that possession of the land has been taken and that the land has vested in the national or county governments as the case may be.

(4) Upon taking possession and payment of just compensation in full, the land shall vest in the national or county governments absolutely free from encumbrances.

[Act No. 28 of 2016, s. 82.]

### **121. Surrender of documents of title**

(1) If the documents evidencing title to the land acquired have not been previously delivered, the Commission shall, in writing, require the person having possession of the documents of title to deliver them to the Registrar, and thereupon that person shall forthwith deliver the documents to the Registrar.

(2) On receipt of the documents of title, the Registrar shall—

- (a) cancel the title documents if the whole of the land comprised in the documents has been acquired;
- (b) if only part of the land comprised in the documents has been acquired, the Registrar shall register the resultant parcels and cause to be issued, to the parties, title documents in respect of the resultant parcels.

(3) If the documents are not forthcoming, the Registrar will cause an entry to be made in the register recording the acquisition of the land under this Act.

[Act No. 28 of 2016, s. 83.]

### **122. Acquisition of other land on account of severance**

(1) The powers of acquisition conferred by this Part shall not be exercised so as to acquire a part only of a permanent building in any case if—

- (a) that part is reasonably required for the full and unimpaired use of that building; and
- (b) a person interested in the building desires that the whole of the building shall be acquired.

(2) The person referred to under subsection (1)(b) may, at any time before the Commission has made an award, withdraw or modify the person's statement by notice in writing served on the Commission.

(3) If the Commission is satisfied that the partial compulsory acquisition originally intended will render the remaining land inadequate for its intended use or will severely and disproportionately reduce the value of the remaining land, it will instruct the acquiring authority to acquire the remaining land.

(4) The remaining land referred to in subsection (3) shall be used for public purposes or be included in the Land Bank.

(5) If a question arises as to whether or not any part of a building is reasonably required for the full and unimpaired use thereof, and the parties cannot agree thereon, the matter shall be referred by the Commission to the Court for determination.

[Act No. 28 of 2016, s. 84.]

### **123. Withdrawal of acquisition**

(1) At any time before possession is taken of any land acquired under this Act, the Commission may, revoke a direction to acquire the land, and, shall determine and pay compensation for all damage suffered and all costs and expenses reasonably incurred by persons interested in the land by reason of or in consequence of the proceedings for acquiring the land.

(2) The principles relating to the determination of compensation set out in the rules shall apply, so far as they are relevant, to the determination of compensation payable under this section.

[Act No. 28 of 2016, s. 85.]

### **124. Power to obtain temporary occupation of land**

(1) If the Commission is satisfied that the possession of any land is required by a public body for a particular period not exceeding five years, and that—

- (a) the possession of the land is necessary for public purpose or public interest;
- (b) the possession of the land is necessary in the interests of defence, public safety, public order, public morality, public health, urban and planning, or the development or utilization of any property in such manner as to promote the public benefit; and
- (c) the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property, and so certifies in writing, possession of such land may be taken for that period under this section.

(2) The Commission shall then serve on every person interested or who claims to be interested in the land to be taken possession of under subsection (1), or on such of them as after reasonable inquiry are known to the Commission, a notice that the Commission is to take possession of the land for the period in question.

(3) At the end of seven days after service of notices has been completed under subsection (2), the Commission may after paying full compensation, take possession of the land by entering, personally or by agents, on the land and positing on the land a notice in the prescribed form that possession has been taken of the land, and shall serve a copy of the notice on the occupier.

(4) This section shall not apply where the use of land is likely to cause permanent damage to land.

[Act No. 28 of 2016, s. 86.]

### **125. Payment of compensation**

(1) The Commission shall, as soon as is practicable, before taking possession, pay full and just compensation to all persons interested in the land.

(2) *Deleted by Act No. 28 of 2016, s. 87.*

[Act No. 28 of 2016, s. 87.]

**126. Compensation for damages**

If the Commission is satisfied that any land of which the occupation or use has been secured under this Part is needed solely as a means of access to other land, then—

- (a) the use of the land shall extend to the passage of vehicles of all kinds, including heavy machinery, whether owned or operated by the public body occupying or using the land or by any contractor or servant employed by that body; and
- (b) the compensation to be paid under section 124 (3) shall be limited to the damage done to trees, plants, growing crops and permanent improvements on the land, together with a periodical sum for diminution in the profits of the land and of adjoining land by reason of that use.

[Act. No. 28 of 2016, s. 88.]

**127. Reference of matters to the Court for determination by the Commission**

(1) The Commission may at any time, by application in the prescribed form, refer to the Court for its determination any question as to—

- (a) the construction, validity or effect of any instrument;
- (b) the persons who are interested in the land concerned;
- (c) the extent or nature of their interest;
- (d) the persons to whom compensation is payable;
- (e) the shares in which compensation is to be paid to tenants in common;
- (f) the question whether or not any part of a building is reasonably required for the full and unimpaired use of the building; or
- (g) the condition of any land at the expiration of the term for which it is occupied or used.

(2) Without prejudice to the powers of the Court under this Part, the costs of any reference to the Court under subsection (1) shall be paid by such person as the Court may direct or, where the Court does not give direction, by the Commission.

**128. Reference to the Environment and Land Court**

Any dispute arising out of any matter provided for under this Act may be referred to the Land and Environment Court for determination.

**129. Right of entry**

The Commission and any officer or person authorized under section 108 shall, upon notice, have the right at all reasonable times to enter upon any land in furtherance of any of the purposes of this Act.

**130. Penalty for obstruction**

A person who wilfully hinders or obstructs the Commission or an officer or person mentioned in section 129 in doing any of the acts authorized or required by this Act, or who wilfully fills up, destroys, damages or displaces any trench, post or mark made or put on land under this Act, commits an offence and is liable, on conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding three million shillings, or to both.

**131. Service of notices**

- (1) A notice which may be given under this Part may be served on a person—
- (a) by delivering it to the person personally;
  - (b) by sending it by registered post to the person's last known address;
  - (c) if the whereabouts of the person or the address cannot, after reasonable inquiry, be ascertained, by leaving it with the occupier of the land concerned or, if there is no occupier, by affixing it upon some prominent part of the land;
  - (d) if the person is a body corporate, society or other association of persons, by serving it personally on a secretary, director or other officer thereof or on a person concerned or acting in the management thereof, or by leaving it or sending it by registered post addressed to the body corporate, society, or, if there is no registered office, at any place where it carries on business, or, if there is none, by leaving it with the occupier of the land concerned, or, if there is no occupier, by affixing it upon some prominent part of the land; or
  - (e) the Commission may in addition to serving notice by paragraphs (c) and (d), place an advertisement in two newspapers with a national circulation.

**132. Exemption from stamp duty**

Stamp duty shall not be chargeable for an award or agreement made under this Act, and no person claiming any such award or agreement shall be liable to pay a fee for a copy of the agreement.

**133. Rules**

The Commission may make rules generally for carrying out the purposes and provisions of this Part.

**PART IX – SETTLEMENT PROGRAMMES****134. Establishment of settlement scheme**

(1) The National Government shall implement settlement programmes to provide access to land for shelter and livelihood.

(2) Settlement programmes shall, for the purposes of this Act, include, but not be limited to provision of access to land to squatters, persons displaced by natural causes, development projects, conservation, internal conflicts or other such causes that may lead to movement and displacement.

(3) The national government shall administer the settlement programmes in consultation with the Commission and the respective county governments.

(4) Identification of beneficiaries shall be carried out and verified by a sub-county selection committee appointed by the Cabinet Secretary comprising of the following persons—

- (a) the deputy county commissioner;
- (b) the sub-county administrator;
- (c) a representative of the Commission;
- (d) a national government representative, who shall be the secretary;
- (e) a representative of persons with special needs;
- (f) a representative of women;

- (g) a youth representative; and
- (h) a representative of elders

Provided that—

- (i) the persons appointed under paragraphs (e), (f), (g) and (h) shall be nominated by the area member of the National Assembly; and
- (ii) a chairperson shall be appointed at the first sitting of the committee from the persons appointed under paragraphs (e), (f), (g) and (h).

(5) The Commission shall reserve public and for the establishment of approved settlement programmes, and where public land is not available, the board of trustees shall purchase or acquire land for such purposes.

(6) Upon planning and survey, land in settlement schemes shall be allocated to households in accordance with national values and principles of governance provided in Article 10 of the Constitution and the principles of land policy provided in Article 60(1) of the Constitution and any other requirements of natural justice.

(7) Any land acquired in a settlement scheme established under this Act or any other law shall be subdivided and a transfer shall only be allowed through a process of succession.

(8) Beneficiaries of land in settlement schemes shall pay a sum of money as may be determined from time to time by the body of trustees responsible for settlement matters.

(9) The funds provided by the national government and county governments for the purposes of the settlement programmes shall be administered in accordance with the law relating to public finance management.

[Act No. 28 of 2016, s. 89.]

### **135. Land Settlement Fund**

(1) There is established a Fund to be known as the Land Settlement Fund which shall be administered by a board of Trustees known as the Land Settlement Fund Board of Trustees.

(1A) The Board of Trustees shall be a body corporate with perpetual succession and a common seal, and which shall in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments;
- (d) doing or performing such other things or acts necessary for the proper performance of the functions of the Agency under this Act and which may lawfully be done or performed by a body corporate.

(1B) The Board of Trustees shall consist of—

- (a) the Cabinet Secretary responsible for land matters who shall be the chairperson;
- (b) the Cabinet Secretary National Treasury;
- (c) the Cabinet Secretary responsible for agriculture;
- (d) the Cabinet Secretary responsible for the environment and natural resources;

- (e) the Cabinet Secretary responsible for Internal Security; and
  - (f) a representative of the Commission.
- (1C) The Board of Trustees shall —
- (a) be responsible for the provision of access to land —
    - (i) to squatters;
    - (ii) to displaced persons;
    - (iii) for development projects;
    - (iv) for conservation; or
    - (v) such other causes that may lead to movement and displacement of persons;
  - (b) purchase private land for settlement programmes;
  - (c) coordinate the provision of shelter and a livelihood to persons in need of settlement programmes; and
  - (d) perform any other function that may enhance the development and promotion of settlement programmes.
- (2) There shall be paid into the Fund—
- (a) any monies appropriated by Parliament for the purposes of the Fund;
  - (b) any funds provided by bilateral or multilateral donors, for the purpose of the Fund;
  - (c) gifts, grants, donations or endowments as may be given to the Board of the Land Settlement Fund Trustees for the purpose of the Fund;
  - (d) monies that may be borrowed by the Board of the Land Settlement Fund Trustees for the purposes of the Fund;
  - (e) the rates, charges, dues, or fees levied by the Board of the Land Settlement Fund Trustees under this Act;
  - (f) all monies derived from the payment made by beneficiaries of settlement schemes; and
  - (g) such sums as may be payable to the Board of the Land Settlement Fund Trustees pursuant to this Act or any other written law.
- (3) The Fund shall be applied to the following purposes—
- (a) provision of access to land—
    - (i) to squatters;
    - (ii) to displaced persons;
    - (iii) for development projects;
    - (iv) for conservation; or
    - (v) such other causes that may lead to movement and displacement of persons;
  - (b) purchase of private land for settlement programmes;
  - (c) *deleted by Act No. 28 of 2016, s. 90;*
  - (d) provision of shelter and a livelihood to persons in need of settlement programmes;
  - (e) research, documentation and dissemination of information on settlement programmes; and



- (f) any other purpose that would enhance the development and promotion of settlement programmes that may be approved by the Commission.

(4) The Fund shall be administered in accordance with the provisions relating to public Funds under the law relating to public finance management.

(5) In carrying out its functions under Part IX of this Act, the Board of the Land Settlement Fund Trustees shall consult the relevant county government where applicable.

[Act No. 28 of 2016, s. 90.]

## PART X – EASEMENTS AND ANALOGOUS RIGHTS

### ***General***

#### **136. Interpretation**

(1) In this Part unless the context otherwise requires—

- (a) the land for the benefit of which any easement is created is referred to as the “dominant land” and the land of the person by whom an easement is created is referred to as “the servient land”; and
- (b) an easement is, in relation to the dominant land referred to as “benefiting that land” and is, in relation to the servient land, referred to as “burdening that land”;

(2) Subject to the provisions of this Part, an easement shall be capable of existing only during the subsistence of the land or lease out of which they were created the subsistence of the land on lease of which they were created or in any other manner provided by any other legislation.

#### **137. Application of this part**

(1) This Part shall apply to all easements made or coming into force on or after the commencement of this Act.

(2) Subsection (1) shall not, unless stated specifically otherwise, apply to easements, profits, restrictive agreements and all other like restrictions on the use of land having effect in customary law only.

(3) In this Part, reference to “analogous rights” means an access order made under section 140.

#### **138. Nature of easement**

(1) Subject to any other written law applicable to the use of land, the rights capable of being created by an easement are—

- (a) any rights to do something over, under or upon the servient land; or
- (b) any right that something should not be so done;
- (c) any right to require the owner of servient land to do something over, under or upon that land;
- (d) any right to graze stock on the servient land.

(2) The rights capable of being created by an easement do not include—

- (a) any right to take and carry away anything from the servient land;
- (b) any right to the exclusive possession of any land.

(3) Unless an easement has been created for specific period of time which will terminate at a fixed date in the future or on the happening of a specific event in the future or on the death of the grantor, the grantee or some other person named in the grant, an easement burdens the servient land and runs with the land for the same period of time as the land or lease held by the grantor who created that easement.

(4) Subject to the provisions of this part an easement shall be capable of existing only during the subsistence of the land or lease out of which it was created.

### ***Rights of Way***

#### **139. Entry on neighbouring land where easement is refused**

(1) An owner of any dominant land) may apply to a court on the prescribed form for an order, referred to as an entry order authorising his or her entry on or over any servient land for the purpose of erecting, repairing, adding to, painting or demolishing the whole or any part of any structure on the dominant land or doing any other necessary or desirable thing on that land.

(2) The applicant shall give not less than fourteen days notice in writing to—

- (a) the owner of the servient land; and
- (b) the county government having jurisdiction in the area where the dominant and servient land are located, of the intention to apply for an entry order under this section.

(3) On an application under subsection (1), the court after hearing the applicant and the persons to whom notice was given under subsection (2), may make an entry order authorising the applicant to do all or any of the following—

- (a) to enter on or over the servient land, either personally or through the applicant's employees, agents or contractors, for any purpose specified in the entry order;
- (b) to use for that purpose on or over the servient land any vehicles and other means of transport and any plant machinery, cranes or other equipment as are specified in the entry order;
- (c) to store on the servient land such materials as may be required for the purposes of the work and in any quantities that are specified in the entry order.

(4) In determining whether to grant an entry order under subsection (3), the court shall have regard to—

- (a) the nature and conduct of the negotiations if any, between the owners of the dominant and servient land with respect to any attempt by the owner of the dominant land to obtain an easement for the purpose for which the entry order is applied for from the owner of the servient land;
- (b) the urgency, importance and desirability of the work for which the entry order is being applied for;
- (c) the scope of the work and the length of the time for which the entry order is being applied for;
- (d) whether the applicant has applied for or obtained all permissions, license and consents required from all relevant public authorities to execute the works;
- (e) any other matters that shall appear to the court to be relevant.

(5) An order made under subsection (3) may be made on any condition including—

- (a) the period of time during which the entry on or over the servient land is authorized;
- (b) the hours of the day during which the work may be done;
- (c) the preservation of the safety of persons or property on the servient land;
- (d) the preservation, so far as is consistent with the work to be executed, of the natural features and condition of the servient land;
- (e) the restoration of the servient land to its former state at the conclusion of the work;
- (f) the maintenance of adequate access to the servient land;
- (g) the provision of security or indemnity to secure—
  - (i) the performance of any conditions of the entry order; or
  - (ii) the making good of any damage caused by entry on or over the servient land, or work on or over the land; or
  - (iii) the reimbursement of the owner of the servient land for any costs, expenses or loss arising from the entry; and
- (h) any other relevant matter.

(6) If, as a result of fire, civil commotion or natural disaster, a structure on the dominant land has become a threat to public safety or public health, and there is an urgent need to effect repairs to or demolish that structure and such action may only be executed by entry on or over the servient land, the owner of the dominant land may enter the servient land and effect the repairs or demolition, after giving at least twenty-four hours' notice in writing to the owner of the servient land, but the entry and execution of works shall not prevent the owner of the servient land from applying to the court for an order requiring the owner of the dominant land to make good any damage caused by the entry and works and to reimburse the owner of the servient land for any costs, expenses or loss arising from the entry and works.

(7) In this section—

- (a) an owner of land includes an owner under a lease, a lessor and lessee; and
- (b) neighbouring land means any land in respect of which an order is sought under this section, whether or not it adjoins the land occupied by the applicant for an entry order.

[Act No. 28 of 2016, s. 91.]

#### **140. Access order**

(1) An owner of landlocked land may apply in the prescribed form to a court for an access order, granting reasonable access to that land.

(2) A copy of the application shall be served on—

- (a) the owners of each piece of land adjoining the landlocked land;
- (b) any person claiming an interest in any such piece of land of whom the applicant has actual notice;
- (c) the county government having jurisdiction in the area where the landlocked land is located;

- (d) any other person occupying or having an interest in land which in the opinion of the court may be affected by the granting of the application.

(3) The court, after hearing the applicant and any person served with an application under subsection (2) may make an access order in respect of any other piece of land, the owner of which was served with a copy of the application under subsection (2), for the benefit of the landlocked land.

(4) In considering whether to grant an access order, the court shall consider—

- (a) the nature and quality of the access, if any, to the landlocked land when the applicant first occupied the land;
- (b) the circumstances in which the land became landlocked;
- (c) the nature and conduct of the negotiations, if any, between the owners of the landlocked land and any adjoining or other land with respect to any attempt by the owner of the landlocked land to obtain an easement from one or more owners of the adjoining or other land;
- (d) the hardship that may be caused to the applicant by the refusal of the access order, in comparison to the hardship that may be caused to any other person the making of the order;
- (e) the purposes for which access is or may be required; and
- (f) any other matter that appears to the court to be relevant.

(5) An access order may be made subject to any conditions including—

- (a) the period for which the access order is to be made;
- (b) the payment of reasonable compensation by the applicant to any other person;
- (c) the allocation of the costs of any work necessary to give effect to the order between the applicant and any other person;
- (d) the fencing of any land and the upkeep and maintenance of any such fence;
- (e) the upkeep and maintenance of any land over which the access order has been granted;
- (f) the execution of any instrument or the completion of any prescribed form or the doing of any other thing necessary to give effect to the order;
- (g) any conditions set out in subsection (4) which in the opinion of the court are applicable to an access order; and
- (h) any other relevant matter.

(6) An access order made under this section shall be deemed to have all the characteristics and incidents of an easement and the land over which it has been granted shall be deemed to be the servient land and landlocked land shall be deemed to be the dominant land in respect of that easement.

[Act No. 28 of 2016, s. 92.]

#### **141. Enjoyment of easement and analogous rights**

(1) The benefit of an easement, and an analogous right granted under this part shall, during the term of its existence, be enjoyed by the owner of the dominant land and that owner's successors in title and by—

- (a) any lessee of the dominant land, or so far as the nature of the easement, or analogous right permit, any part of it, and

- (b) any lender on the security of a charge for the time being in possession of the dominant land, or so far as the nature of the easement or analogous right permit, any part of it.

(2) Any person referred to in subsection (1)(a) and (b) who is entitled to the benefit of an easement or analogous right may take in the person's own name any proceedings necessary to enforce that easement or those analogous rights.

[Act No. 28 of 2016, s. 93.]

**142. Repealed by Act No. 28 of 2016, s. 94.**

*Public rights of way*

**143. Power of the Commission to create public rights of way**

(1) Subject to and in accordance with this section and section 146, the Commission may, create a right of way which shall be known as public right of way.

(2) A public right of way may be—

- (a) a right of way created for the benefit of the national or county government, a local authority, a public authority or any corporate body to enable all such institutions, organisations, authorities and bodies to carry out their functions, referred to in this Act as a wayleave; or
- (b) a right of way created for the benefit of the public, referred to in section 145 of this Act as a communal right of way.

(3) A public right of way shall attach to and run with the servient land in respect of which it has been created and shall be binding on all owners from time to time of the servient land, any manner they are occupying the land, whether under a land or a derivative right thereof, or under customary law or as a successor in title to any such owner or as a trespasser.

(4) A wayleave shall authorize persons in the employment to or who are acting as agents of or contractors for any of the organizations, authorities and bodies to enter on the servient land for the purpose of executing works, building and maintain installations and structures and insetting all such works, installations and structures on the servient land and to pass and re-pass along that wayleave in connection with purposes of those organisations, authorities or bodies.

(5) A communal right of way created for the benefit of the public shall entitle the public to pass and re-pass along that right of way and in areas designated for that purpose, to undertake recreational activities or other prescribed activity of the kind permitted in that designated area.

**144. Application for wayleave**

(1) Unless the Commission is proposing on its own motion to create a wayleave, an application, for the creation of a wayleave, shall be made by any State department, or the county government, or public authority or corporate body, to the Commission.

(2) An application shall be made in the prescribed form and shall be accompanied by any prescribed information or other information that the Commission may, in writing require the applicant to supply and the Commission shall not begin the process of creating a wayleave until all prescribed or required information has been submitted to it.

(3) In order to enable a proposed wayleave to be created by the Commission of its own motion to comply with the provisions of this section, the Commission shall complete an application form as if it were applying to create a wayleave and references to “the applicant” in this Sub-part in relation to an application to create a wayleave shall be taken to apply as well to the Commission.

(4) The applicant shall serve a notice on—

- (a) all persons occupying land over which the proposed wayleave is to be created, including persons occupying land in accordance with customary pastoral rights;
- (b) The county government in whose area of jurisdiction land over which the proposed wayleave is to be created is located;
- (c) all persons in actual occupation of land in an urban and per-urban area over which the proposed wayleave is to be created; and
- (d) any other interested person.

(5) along the route of the proposed wayleave calculated to bring the application clearly and in a comprehensible manner to the notice of all persons using land over which the proposed wayleave is likely to be created.

#### **145. Application for communal right of way**

(1) A county government, an association, or any group of persons may make an application to the commission for a communal right of way.

#### **146. Determination on creation of public right of way**

(1) The Commission shall—

- (a) on receipt of all information prescribed or required under this Act;
- (b) after at least ninety days from the date of the serving of notices under section under this Act, consider all the information so received and all representations and objections made by any person served with a notice under the aforesaid subsections and recommend to the Cabinet Secretary whether to—
  - (i) appoint a public inquiry to give further consideration to the representations and objections; or
  - (ii) refer the application to the County Government for its opinion on whether to approve the application; or
  - (iii) initiate and facilitate negotiations between those persons who have made representations on the application and the applicant with a view to reaching a consensus on that application.

(2) If the Commission has proposed the creation of a public right of way of its own motion and representations have been made on that proposal which are concerned with the matters other than the compensation payable for the use of the land for that public right of way, the Commission shall recommend to the Cabinet Secretary only that the Cabinet Secretary exercise the powers under subparagraphs (i) or (ii) of subsection (1).

(3) The Cabinet Secretary shall determine whether or not to create a public right of way, after taking account, as the case may be, of—

- (a) the recommendations of the Commission; or

- (b) the advice of the county government;
- (c) the outcome of any negotiations initiated under subsection (1)(b)(iii).

(4) The Cabinet Secretary may, by order in the *Gazette*, create a public right of way under this section subject to any amendments, limitations and conditions, including conditions as to the costs of constructing and maintain a public right of way.

(5) If an agreement has been reached between the parties to any negotiations initiated under subsection (1)(b)(iii) and if the Cabinet Secretary intends to create a public or right of way but not to accept any amendment, limitation or condition of that agreement, the Cabinet Secretary shall refer the matter back to the parties for reconsideration and take no decision on the creation of that right of way until at least than thirty days have elapsed from the date of the referral of the matter back to the parties or the parties have resubmitted their agreement, with or without amendments, to the Cabinet Secretary whichever is the shorter period.

(6) The order of the Cabinet Secretary to create a public right of way shall—

- (a) delineate the route of that public right of way;
- (b) be published in the *Gazette*;
- (c) be notified to a county government having jurisdiction along the route of the public right of way;
- (d) be publicized in any manner which is calculated to bring it to the attention of people occupying and using land along the route of the public right of way; and
- (e) come into force thirty days after it has been published in the *Gazette*.

(7) Any person who makes any representation or objection to an application to create a public right of way, within six weeks after the order has been made, may appeal to the Court on a point of law against an order made by the Cabinet Secretary under this section, but apart from such an appeal, an order of the Cabinet Secretary shall not be questioned by way of judicial review or otherwise in any court.

[Act No. 28 of 2016, s. 95.]

#### **147. Power of Registrar with respect to public right of way**

(1) If the Cabinet Secretary has made an order to create a public right of way the Commission shall cause all the necessary documents, plans, demarcations and surveys Compensation in respect of public right of way Subject to the provisions of this section, of the route of that public right of way to be delivered to the Registrar to enable the registrar to exercise the powers under this section.

(2) On receipt of the information referred to in subsection (1), the Registrar after the expiry of the time allowed in section 146(6)(e) to appeal against the order of the Cabinet Secretary shall, take any necessary, desirable or prescribed action which the Registrar may consider necessary and desirable or which may be prescribed—

- (a) to cause to be recorded, in such forms as may be prescribed, the route of the public right of way on any certificate of title or certificate of lease or other document of title held in any office of the land registry having reference to land over which the public right of way has been created; and

- (b) to cause to be delivered to the Registrar all certificates of occupancy having reference to land over which the public right of way has been created held by—
  - (i) persons occupying such land under such right of occupying; or
  - (ii) by any lender of money secured by a charge or *lien* who is holding that certificate of occupancy as part of the security for that loan, so as to amend that certificate of title or certificate of lease by recording the route of the public right of way on that certificate of occupancy.

[Act No. 28 of 2016, s. 96.]

#### **148. Compensation in respect of public right of way**

(1) Subject to the provisions of this section, compensation shall be payable to any person for the use of land, of which the person is in lawful or actual occupation, as a communal right of way and, with respect to a wayleave, in addition to any compensation for the use of land for any damage suffered in respect of trees crops and buildings as shall, in cases of private land, be based on the value of the land as determined by a qualified valuer.

(2) Compensation relating to a wayleave or communal right of way shall not be paid to a public body unless there is a demonstrable interference of the use of the land by that public body.

(3) Damage caused as a result of the creation of a wayleave shall include any preliminary work undertaken in connection with surveying or determining the route of that wayleave, and whether the trees, crops or buildings so damaged were included in the route of the wayleave as delineated in the order of the Cabinet Secretary.

(4) The duty to pay compensation payable under this section shall lie with the State Department, county government, public authority or corporate body that applied for the public right of way and that duty shall be complied with promptly.

(5) If the person entitled to compensation under this section and the body under a duty to pay that compensation are unable to agree on the amount or method of payment of that compensation or if the person entitled to compensation is dissatisfied with the time taken to pay compensation, to make, negotiate or process an offer of compensation, that person may apply to the Court to determine the amount and method of payment of compensation and the Court in making any award may, make any additional costs and inconvenience incurred by the person entitled to compensation.

(6) The Commission shall make Regulations prescribing the criteria to be applied in the payment of compensation under this section and to give effect to this section.

#### ***Powers of Court***

#### **149. Power of courts to enforce public rights of way**

In determining any question or dispute concerning the existence or effect of a public right of way, a court may make an order on any condition, which it thinks fit on all or any of the following matters—

- (a) the existence of a public right of way;
- (b) the enforceability a public right of way by or against any person;



- 
- (c) the extent of the use of the easement, analogous right or public right of way and whether that use exceeds what is reasonable or is permitted under the terms of the grant of the easement or the terms of the order creating the analogous right or public right of way;
  - (d) the question whether any work is required to be done under the terms of an easement, analogous right or public right of way; and, if so, the nature and extent of the work required to be undertaken;
  - (e) the reasonable and proper cost of any such work as is required to be undertaken;
  - (f) the person or persons by whom the costs of any such work is to be borne and if the cost is to be shared between two or more persons, the shares to be borne by each such person;
  - (g) the date by which and the manner in which any such work is to be undertaken;
  - (h) the entry on to any land, whether or not it is land over which an easement, analogous right or public right of way has been created, for the purpose of doing the work and the use over or on that land of any vehicles, plant, machinery and installations for the purpose of carrying out that work; or
  - (i) any other matter arising in relation to question or dispute about an easement, analogous right or public right or way.

#### PART XI – MISCELLANEOUS

### 150. Jurisdiction of the Environment and Land Court

The Environment and Land Court established in the Environment and Land Court Act and the subordinate courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.

[Act No. 25 of 2015, Sch.]

### 151. Substituted service

If the Commission is satisfied that a notice cannot be served personally or by post, either because the person to be served is evading service or for some other reason the Commission may order service to be effected by—

- (a) affixing a copy of the notice in a conspicuous place—
  - (i) on or as near as may be to the land where possible; and
  - (ii) if the land is community land, at the offices of the Community Land Committee or other public place within the village; or
  - (iii) if the land is public land, at the offices of the county government having jurisdiction in the area where the land is located or other public place in the area where the land is located; and
- (b) publishing a copy in the *Gazette* and if it thinks fit, one or more newspapers circulating in Kenya.

[Act No. 28 of 2016, s. 97.]

### 152. Rights of entry

(1) Any person authorised in that behalf by the Commission shall have power, on the giving of not less than forty eight hours notice, to enter and inspect at all reasonable times between the hours of 6.00 a.m. and 6.00 p.m. any public land,

other than land occupied exclusively as a dwelling house, for any purpose connected with the implementation of this Act.

(2) The notice required by subsection (1) to be given prior to any entry on to land shall specify clearly the purpose for which and the time at which the authorised person will enter the land.

(3) Every person authorised to enter or inspect land under this section shall be furnished with a written authorization signed by the Commission and if so required by any person having an interest in or occupying the land to be entered and inspected, shall produce the same to that person.

(4) If any person authorised under this section causes any damage to land or anything on the land during an entry and inspection, the Commission, shall forthwith appoint a person to assess the damage and pay promptly compensation based on that assessment to the person whose land or thing on the land have been damaged.

#### **152A. Prohibition to unlawful occupation of land**

A person shall not unlawfully occupy private, community or public land.

[Act No. 28 of 2016, s. 98.]

#### **152B. Evictions to be undertaken in accordance with the Act**

An unlawful occupant of private, community or public land shall be evicted in accordance with this Act.

[Act No. 28 of 2016, s. 98.]

#### **152C. Eviction Notice to unlawful occupiers of public land**

The National Land Commission shall cause a decision relating to an eviction from public land to be notified to all affected persons, in writing, by notice in the *Gazette* and in one newspaper with nationwide circulation and by radio announcement, in a local language, where appropriate, at least three months before the eviction.

[Act No. 28 of 2016, s. 98.]

#### **152D. Eviction Notice to unlawful occupiers of community land**

(1) The County Executive Committee Member responsible for land matters shall cause a decision relating to an eviction from unregistered community land to be notified to all affected persons, in writing, by notice in the *Gazette* and in one newspaper with nationwide circulation and by radio announcement, in a local language, where appropriate, at least three months before the eviction.

(2) In the case of registered community land, the procedure prescribed in section 152E shall apply.

[Act No. 28 of 2016, s. 98.]

#### **152E. Eviction Notice to unlawful occupiers of private land**

(1) if, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction.

(2) the notice under subsection (1) shall—

(a) be in writing and in a national and official language;

- (b) in the case of a large group of persons, be published in at least two daily newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land;
- (c) specify any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters as the case may require; and
- (d) be served on the deputy county commissioner in charge of the area as well as the officer commanding the police division of the area.

[Act No. 28 of 2016, s. 98.]

#### **152F. Application to Court for relief**

(1) Any person or persons served with a notice in terms of sections 152C, 152D and 152E may apply to Court for relief against the notice.

(2) The Court, after considering the matters set out in sections 152C, 152D and 152E, may—

- (a) confirm the notice and order the person to vacate;
- (b) cancel, vary, alter or make additions to the notice on such terms as it deems equitable and just;
- (c) suspend the operation of the notice for any period which the court shall determine; or
- (d) order for compensation.

[Act No. 28 of 2016, s. 98.]

#### **152G. Mandatory procedures during eviction**

(1) Notwithstanding any provisions to the contrary in this Act or in any other written law, all evictions shall be carried out in strict accordance with the following procedures —

- (a) be preceded by the proper identification of those taking part in the eviction or demolitions;
- (b) be preceded by the presentation of the formal authorizations for the action;
- (c) where groups of people are involved, government officials or their representatives to be present during an eviction;
- (d) be carried out in a manner that respects the dignity, right to life and security of those affected;
- (e) include special measures to ensure effective protection to groups and people who are vulnerable such as women, children, the elderly, and persons with disabilities;
- (f) include special measures to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction;
- (g) include mechanisms to protect property and possessions left behind involuntarily from destruction;
- (h) respect the principles of necessity and proportionality during the use of force; and
- (i) give the affected persons the first priority to demolish and salvage their property.

(2) The Cabinet Secretary shall prescribe regulations to give effect to this section.

[Act No. 28 of 2016, s. 98.]

#### **152H. Disposal of property left after eviction**

The competent officer of the Commission or County Government, community owning a registered community land or owner of private land shall at least seven days from the date of the eviction, remove or cause to be removed or disposed by public auction, any unclaimed property that was left behind after an eviction from private, community or public land.

[Act No. 28 of 2016, s. 98.]

#### **152I. Demolition of unauthorized structures**

Where the erection of any building or execution of any works has commenced or been completed on any land without authority, the competent officer shall order the person in whose instance the erection or work began or was carried, to demolish the building or works, within such period as may be specified in the order.

[Act No. 28 of 2016, s. 98.]

**153.** *Repealed by Act No. 28 of 2016, s. 99.*

#### **154. Fees**

(1) The Cabinet Secretary shall prescribe the rates of fees for all matters in respect of which, by this Act, prescribed fees are required to be paid by any person and shall keep such fees under continuous review.

(2) Fees prescribed under this section shall be at a per centum rate of the value of the land the subject of the application or other matter in respect of which fees are required to be paid.

(3) The Registrar shall refuse to make any entry on the register or register any document in respect of any grant of a land or any disposition of or arising in connection with a land in respect of which a fee has not been paid in whole or in part, unless the Registrar is satisfied on the basis of written evidence that the fee has been waived in whole or in part or that it has been agreed between the payer and payee that the fee may be paid in instalments and there are no arrears in those instalments.

(4) Unpaid fees or expenses incurred by the Government in connection with any attempt to recover those unpaid fees shall constitute civil debt recoverable summarily.

#### **155. Unlawful occupation of land**

(1) Any person who, without, express or implied, lawful authority or without any right or license, under customary or statutory land law so to do—

- (a) occupies, or erects any building on any public land;
- (b) clears, digs, ploughs, cultivates, or grazes animals over, any public land or part of it; or
- (c) cuts or removes any timber or other produce on or from any public land or part of it,

shall be taken to be in unlawful occupation of that land.

(2) If, with respect to public land the Commission is of the opinion that a person is in unlawful occupation of public land, the Commission may serve on that person

a notice in the prescribed form or give to that person an oral communication, in a language calculated to be understood by that person requiring that person to show cause as to why the person should not be required to vacate that land within any time and subject to any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters which the justice of the case may require, which may be specified in the notice or oral communication.

(3) Any notice referred to in subsection (2) shall inform the person to whom it is addressed that the person has a right to be heard in connection with showing cause as to why the person should not vacate the land to which the notice relates.

(4) In determining whether to serve a notice or oral communication and the period of time to be specified in the notice by the end of which the person is required to vacate the land, the Commission shall take account of—

- (a) whether the person has reasonable belief that the person is in lawful occupation of land;
- (b) the use which the person is making of the land, including any crops being grown by that person and when they may reasonably be expected to be ready to be harvested;
- (c) the length of time that person has been on that land and the person's age and general circumstances;
- (d) whether that person is living with any dependants;
- (e) whether that person or any dependants of that person are in employment near to that land;
- (f) whether the occupation of the land took place peaceably or by force and whether the occupation is, as a consequence, depriving and person of the lawful occupation and use of that land which that person could take up immediately the land was vacated;
- (g) whether the occupation of the land is preventing some necessary or desirable development or public works;
- (h) the nature and environment of the land and where the land is land reserved for the primary use of wildlife, whether the occupation of the land is hindering or preventing the use of the land by wildlife or is in practice in harmony with that use;
- (i) whether in all the circumstance, it would be reasonable to pay any sum of money to the person on account of being required to vacate the land;
- (j) any other factors, which seem relevant include any matters that the person occupying the land brings to the attention of the Commission.

(5) A person served with a notice or oral communication under this section shall, within not more than sixty days, show cause to the Commission as to why the person should not vacate the land to which the notice relates.

(6) If a person does not show cause within sixty days as to why the land should not be vacated, and has no reasonable excuse for not so complying, the person shall be deemed to have accepted the notice and shall be under duty to comply with that notice.

(7) Where after considering any representations made by the person attempting to show cause the Commission determines that the person has failed to show cause, the Commission shall inform that person by notice or oral communication to vacate the land within the time specified in the notice served under subsection (2).

(8) A person who responded to the notice to show cause but who failed so to do in terms of subsection (5) may apply to the court for relief against the operation of that notice or oral communication, within thirty days of being notified of the failure has failed to show cause.

(9) An application for relief is not to be taken as an admission by the person applying for relief:

Provided that—

- (a) the person is in unlawful occupation of the land;
- (b) by reason of that unlawful occupation, the Commission has the right to require the person to vacate the land in respect of which the application for relief has been made;
- (c) all notices and oral communications which were required to be served by the Commission were properly served; or
- (d) the period by which the land must be vacated specified in the notice or oral communication was reasonable or had expired.

(10) The court, may after considering the matters set out in subsection (4), grant relief to the person applying for the same on any terms and conditions that appear to the court to be just and reasonable and, without prejudice to the generality of this provision, the court may—

- (a) cancel the notice or oral communication and declare that the person is entitled to remain on the land;
- (b) postpone the operation of the notice or oral communication and grant the person a license to remain on the land until the notice or oral communication shall come into operation;
- (c) vary the operation of the notice or oral communication by granting the person an easement of grazing of any terms and conditions which the court shall think fit, if the person is a pastoralist;
- (d) vary any of the terms of the notice or oral communication or the period within which the person is required to vacate the land; or
- (e) vary the amount of any payment to be paid, or where no payment has been offered, order that payment as the court shall think just be made to the person on vacating of the land.

(11) If the court has confirmed the notice or oral communication, with or without any variations, alterations or additions in the exercise of its powers under subsection (10), the notice or oral communication, the person on whom has been served shall be under a duty to comply with that notice or oral communication as confirmed by the court.

[Act No. 28 of 2016, s. 100.]

## **156. Obstruction of public right of way**

(1) If the Commission is satisfied that there has been any wrongful obstruction of or encroachment on any public right of way, it may make an order requiring the person responsible for that obstruction or encroachment to remove that obstruction or encroachment within the time specified in the order, which shall be not less than fourteen days, and if that order is not complied with within the time specified, the Commission may take any steps which may be necessary for the purpose.

(2) Any notice made by the Commission under subsection (1) shall be served on or otherwise communicated to the person alleged by the notice to be responsible

for the obstruction or encroachment in such a manner as that person will understand that notice and what is required to be done under the notice.

(3) A person served with a notice under subsection (1), may request the Commission to reconsider the notice within the time specified in the notice and on giving reasons.

(4) A person who does not take action under subsection (3) shall be taken to have accepted the notice and shall be under a duty to comply with it.

(5) If the Commission has reconsidered the notice in response to a request made in accordance with subsection (3), and determines to confirm the notice, it shall inform the person who made the request for a reconsideration that it has confirmed the notice.

(6) A person whose request for a reconsideration of the notice has resulted in the notice being confirmed may appeal to a court against that confirmed notice, but if the person does not so appeal within the time specified in the notice for compliance with the notice, the person shall be deemed to have accepted the notice and shall be under a duty to comply with it.

(7) A court hearing an appeal under this section may—

- (a) confirm the notice and order the person to desist from obstructing or encroaching on the public right of way;
- (b) suspend the operation of the notice for any period which the court shall determine; or
- (c) quash the notice,

and may make any ancillary orders which the circumstances of the case may require.

## **157. Offences**

(1) Any person who—

- (a) knowingly makes any false statement, orally or in writing, in connection with any disposition or other transaction affecting land or any other matter arising under this Act;
- (b) knowingly gives any false information or makes any false statement, either orally or in writing, in connection with any call for information made under this Act or in connection with any investigation into the commission of any offence under this Act;
- (c) fraudulently procures—
  - (i) the registration or issue of any certificate of ownership, or any other document or instrument relating to the land; or
  - (ii) the making of any entry or the endorsement of any matter on any document or instrument referred to in sub-paragraph (i); or
  - (iii) the cancellation or amendment of any of the documents referred to in this paragraph instruments our entries or endorsements; or
- (d) fraudulently alters, adds to, erases, defaces, mutilates or destroys any document or instrument relating to land or any entry on or endorsement of any such document or instrument; suppresses or conceals from the Commission, the Registrar, or any authorized officer exercising powers under this Act or assists or joins in so doing, any material document, fact or matter, commits an offence and on

conviction is liable to a fine not exceeding ten million shillings or imprisonment for a term not exceeding ten years or to both the fine and imprisonment.

(2) Any person who unlawfully occupies public land commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings, and in the case of a continuing offence to an additional fine not exceeding ten thousand shillings for every day during which the offence shall have continued.

(3) Any person who wrongfully obstructs or encroaches on to a public right of way and who does not within the time specified in any notice served on the person under section 112 or where the person has appealed against the notice, within the time specified in the notice after the hearing of the appeal where the court has rejected that appeal, remove that obstruction or cease that encroachment commits an offence and upon conviction is liable, on conviction to a fine not exceeding ten million shillings and in the case of a continuing offence to an additional fine not exceeding one hundred thousand shilling for every day during which the offence continues.

(4) Any person who wilfully—

- (a) delays;
- (b) obstructs;
- (c) hinders;
- (d) intimidates; or
- (e) assaults,

any person authorized under this Act to inspect any land in the lawful exercise of the power in that behalf commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding three years or to both the fine and imprisonment.

(5) Any person who, being an authorized officer under this Act, whether generally or for a specific function, in the course of any official function or otherwise, unlawfully or with force enters on the land of any person or while on land, wilfully commits any damage to the land or anything on the land, whether naturally on the land, or stock owned by any person using the land or crops planted or buildings erected on the land commits an offence and upon conviction is liable, to a fine not exceeding five hundred thousand shillings or to imprisonment not exceeding three months or to both the fine and imprisonment.

(6) If a court has convicted any person of an offence under this section and the commission of that offence enabled that person to obtain or retain or regain any interest in land which the person would otherwise not have been able to obtain, retain or regain, the court may in addition to any punishment provided for by this section imposed on such person, make any such order in relation to that interest in land so obtained, retained or regained by such person as appears to the court necessary to ensure that such person does not profit by the offence of which the person has been convicted and without prejudice to the generality of this provision, any such order may—

- (a) direct the Commission to commence proceedings to—
  - (i) revoke the allocation; or
  - (ii) terminate a lease.
- (b) direct the Registrar to cancel any entry in any register which has been obtained by virtue or on account of the offence;



- (c) require that person to make restitution to any person who has suffered loss by virtue or on account of the offence, including taking all necessary action to transfer to any such person any interest in land obtained, retained or regained by such offence from that person, and any such order may be made subject to any conditions which the court.

(7) The Registrar shall not be personally liable in respect of any act done while exercising any powers under this Act and within the scope of official capacity, if the Registrar did that act in the honest belief that the Registrar was entitled to do it.

#### **158. Corrupt transactions**

(1) Nothing in this Act shall be taken or construed to validate, affirm, authenticate or give any legal effect to—

- (a) any grant of public land;
- (b) any issue of a certificate of ownership of land; or
- (c) any disposition, or any contract for any of the earlier mentioned transactions which was obtained or induced by corruption, on the part of any government official, county government official or employee of the Commission whether or not that government official, county government official or employee of the Commission was directly involved in that transaction.

(2) Notwithstanding the provisions of any other written law, a transaction under subsection (1) shall be illegal from its inception and shall be void and of no legal effect.

(3) For purposes of this section, a transaction shall be considered to be affected or tainted by corruption when either—

- (a) any party to or involved directly or indirectly in the transaction in respect of which it is alleged that an action was corrupt is convicted of corruption and all final appeals arising from that conviction have been concluded; or
- (b) any employee of the Commission or other public official is interdicted, or is retired in the public interest, from the position on the grounds that the person has been engaged in corrupt actions and that these actions involved that transaction; or
- (c) a court of competent jurisdiction so determines.

(4) Any person occupying land obtained as a consequence of participating in any of the transactions under subsections (1) and (3) shall be liable to forfeit that land to the government without any entitlement to any compensation.

(5) Notwithstanding that a transaction covered by this section is void, a person occupying land as a consequence of that transaction shall be obliged to comply with all the terms and conditions of the transaction as if it had been a valid transaction and shall be liable to all the remedies which may be applied to a person who fails to comply with the terms and conditions of a valid transaction in addition to any penalties which may be applied under this section.

#### **159. Minimum and maximum land holding acreages**

(1) Subject to Article 40 of the Constitution—

- (a) the minimum land holding acreage shall be subject to the provisions of Article 66(1) of the Constitution and the legislation envisaged therein.

- (b) the maximum land holding acreage shall be subject to Article 60( 1) (a) and (c) of the Constitution.

(2) The Cabinet Secretary shall publish guidelines on the penalties for non-compliance with the provisions of this section.

[Act No. 28 of 2016, s. 101.]

#### **160. General power to make regulations**

(1) The Commission or the Cabinet Secretary, where applicable, make regulations prescribing anything which may be prescribed under this Act and generally for the better carrying into effect of the purposes and provisions of this Act and without prejudice to the generality of the foregoing, such regulations may prescribe—

- (a) the forms to be used in connection with this Act;
- (b) the management of the Land Compensation Fund;
- (c) the use and management of public rights of way created under this Act;
- (d) procedures to be followed with respect to the making of any claim for compensation and the payment of any compensation under this Act;
- (e) the manner of assessing value of an interest in land; or
- (f) the minimum and maximum land holding acreages in respect of private land.

(2) Without prejudice to the foregoing, the Commission shall have the powers to make regulations—

- (a) to secure the land rights of the minority communities to individually or collectively access and use land and land based resources following an inventory of the existing minority communities to obtain a clear assessment of their status and land rights;
- (b) to prevent and manage land based disasters and to provide for settlement in the event of natural disasters;
- (c) to establish, plan and manage refugee camps;
- (d) to deal with issues that arise from internal displacement of persons and provide for the settlement of the internally displaced persons; and
- (e) with respect to squatters—
  - (i) to establish appropriate mechanisms for their removal from unsuitable land and their settlement;
  - (ii) to facilitate negotiation between private owners and squatters in cases of squatter settlements found on private land;
  - (iii) to transfer unutilized land and land belonging to absentee land owners to squatters; and
  - (iv) to facilitate the regularization of existing squatter settlements found on public and community land for purposes of upgrading or development.

#### **161. Repeals**

(1) The written laws set out in the Schedule to this Act are hereby repealed.

(2) All other law relating to land shall be construed with the alterations, adaptations, qualifications and exceptions necessary to give effect to this Act.

**162. Savings and transitional provisions with respect to rights, actions, dispositions etc.**

(1) Unless the contrary is specifically provided in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall continue to be governed by the law applicable to it immediately prior to the commencement of this Act.

(2) Unless the contrary is specifically provided in this Act or the circumstances are such that the contrary must be presumed, if any step has been taken to create, acquire, assign, transfer, or otherwise execute a disposition, any such transaction shall be continued in accordance with the law applicable to it immediately prior to the commencement of this Act.

(3) Any instrument executed before the commencement of this Act whereby any disposition permitted under this Act is completed may be presented for registration in the prescribed register and—

- (a) the question whether any instrument so presented is to be registered shall be determined by the Registrar by reference to the law in force at the time of its execution; and
- (b) Subject to the provisions of paragraph (a), the provisions of this Act shall apply to that instrument as if it had been executed after the commencement of this Act.

(4) If a lessor or lender had initiated any steps to forfeit a lease or to foreclose a charge, as the case may be, before the commencement of this Act, a court may on the application of the lessee or the chargor issue an injunction to the lessor or, to the lender to stop the continuation of any such step.

(5) If a court had issued an injunction under subsection (4), the lessor or lender to whom the injunction has been issued may commence any action under this Act to terminate that lease or bring that charge to an end.

**163. Amendment of Cap. 318**

Section 168 of the Agriculture Act (Cap. 318) is amended by—

- (a) deleting paragraph (d) of sub-section (1); and
- (b) deleting paragraph (e) of sub-section (2).

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**SCHEDULE**

[Section 161.]

**REPEALED LAWS**

The Wayleaves Act (Cap. 292)

The Land Acquisition Act (Cap. 295)

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