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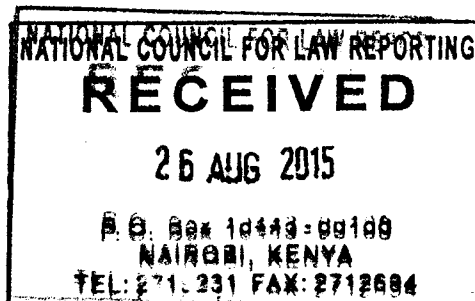
NAIROBI, 18th August, 2015

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THE UNIVERSITY OF CHICAGO
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THE LAND LAWS (AMENDMENT) BILL, 2015

A Bill for

AN ACT of Parliament to amend the laws relating to land to align them with the Constitution, to give effect to Articles 68(c)(i) and 67(2)(e) of the Constitution, to provide for procedures on evictions from land, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Land Laws (Amendment) Act, 2015.

Short title.

2. Section 2 of the Land Registration Act is amended in section 2—

Amendment to section 2 of No.3 of 2012.

(a) by deleting the definition of “assignee” and substituting therefor the following new definition—

“assignee” has the meaning assigned to it under the Land Act, 2012;

No. 6 of 2012.

(b) in the definition of “borrower” by deleting the words “land or lease” and substituting therefor the words “interest in land or lease”;

(c) in the definition of “caution” by deleting paragraph (b);

(d) deleting the definition of “charge” and substituting therefor the following new definition—

“charge” has the meaning assigned to it under the Land Act, 2012;

No. 6 of 2012.

(e) deleting the definition of “Court” and substituting therefor the following new definition—

“Court” means the Environment and Land Court established by the Environment and Land Court Act, 2011, and other courts having jurisdiction on matters relating to land;

No. 19 of 2011.

(f) deleting the definition of the word “disposition” and substituting therefor the following new definition—

No. 6 of 2012.

“disposition” has the meaning assigned to it under the Land Act, 2012;

- (g) by deleting the definition of “register” and substituting therefor the following new definition—

“register means the register maintained under section 7 of the Act”;

- (h) in the definition of “Registrar” by inserting the words “the Deputy Land Registrar” immediately after the words “Chief Land Registrar”;
- (i) inserting the following new definitions in their proper alphabetical sequence—

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

“cadastral plan” means a geo-referenced plan approved by the statutory body responsible for survey of land;

“certificate” means a certificate of lease or a certificate of title;

“community land register” means a register compiled in accordance with section 8 of the Act and the law relating to community land;

“condominium” means housing consisting of a complex of dwelling units in which each unit is individually owned;

“copy of a document” in respect to a prescribed document or other document required by law means a copy of that document certified as a true copy of the original by an authorized person;

“easement” has the same meaning assigned in the Land Act, 2012; No. 6 of 2012

“encumbrance” means any charge, lease, or other interest noted or required to be noted in the encumbrance Section of the Land Register;

“fees” means money payable for any land transaction or service as prescribed by the Cabinet Secretary under regulations;

“licensee” has the same meaning assigned to it under the Land Act;

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

“matrimonial property” means any interest in land or lease that is acquired by a spouse or spouses during the subsistence of a marriage;

“registration” means bringing of an interest in land or lease under the provisions of the Act and includes making of an entry, note or record in the land register;

“sectional plan” means a geo-referenced plan of units or a part of land as the case may be prepared by a surveyor and approved by the statutory body responsible survey of land;

“sectional unit” means a space that is situated within a building and described in a sectional plan by reference to floors, walls and ceilings within the buildings;

“spouse” means either a husband or a wife married under any recognized law in Kenya;

“Rules Committee” means the rules committee of the High Court;

“transfer” means passing of an estate or interest in land or lease under this Act, whether for valuable consideration or otherwise.

3. Section 6 of the Land Registration Act is amended—

- (a) in subsection (1), by deleting the words “Commission in consultation with the national and county governments” and substituting therefor with the words “Cabinet Secretary, in consultation with the Commission”;
- (b) in subsection (5), by deleting the word “Commission” appearing immediately after the words “by the” and substituting therefor with the word “Cabinet Secretary”.

Amendment of
section 6 No. 3 of
2012.

4. The Land Registration Act is amended by inserting the following new section immediately after section 6—

Insertion of new section 6A.

Procedure for constituting a registration unit.

6A. (1) Pursuant to Article 67(2)(c) of the Constitution, the Cabinet Secretary shall develop and publish in the *Gazette* a comprehensive programme throughout Kenya, for the registration of titles in land.

(2) The programme referred to in subsection (1) shall—

- (a) declare an area or areas of land to constitute a land registration unit;
- (b) identify the land to be adjudicated for purposes of registration;
- (c) request all persons with an interest in the land to attend a specified meeting; and
- (d) invite all persons with claims on the land to mark and indicate their boundaries prior to the meeting.

(3) Every land registration process shall conform to the following principles—

- (a) involvement and engagement of the people residing in the land by creating awareness on the adjudication process and taking an inventory of their land;
- (b) recording interests in land;
- (c) actual physical demarcation of the land and delineation of boundaries involving the people;
- (d) conferment of certificate of title to the proprietors; and
- (e) conclusion within the time specified in the *Gazette*.

(5) The residents of any unregistered area may apply to the Cabinet Secretary to have the whole or part of its land to be declared a registration unit in accordance with this section.

(6) The Cabinet Secretary shall, in consultation with Commission, make rules

for the conduct of the adjudication of land in the counties including—

5. Section 7 of the Land Registration Act is amended by—

Amendment of section 7 of No. 3 of 2012.

- (a) in subsection (1) by deleting the word Commission wherever it appears and substituting therefor the word “Cabinet Secretary”;
- (b) in subsection (3) by deleting the words “Public Service Commission and”;
- (c) inserting the following new subsections immediately after subsection (3)—

“(4) The land register shall include the following features—

- (a) the property section;
- (b) the proprietorship section; and
- (c) the encumbrance section;
- (d) the user of the land;
- (e) any other feature required under any law or otherwise considered necessary by the Cabinet Secretary.

(5) Registration shall be effected by an entry in the register in such form as may from time to time be prescribed by the Cabinet Secretary, and by cancellation of the entry, if any, which it replaces.

(6) Subject to the provisions of this Act, the Registrar may at any time, open a new edition of a register showing only the subsisting entries and omitting therefrom all entries that have ceased to have effect.

(7) The Registrar may cancel any entry in the register which have ceased to have effect.”

6. Section 8 the Land Registration Act is amended by deleting the word “Register” appearing the in the marginal note.

Amendment of section 8 of No. 3 of 2012.

7. Section 9 of the Land Registration Act is amended by inserting the following new paragraph in subsection (2) immediately after paragraph (d)—

Amendment of section 9 of No. 3 of 2012.

(da) passport number, telephone number and email address, where applicable.

8. Section 12 of the Land Registration Act is amended in subsection (1)—

Amendment of section 12 of No. 3 of 2012.

(a) deleting the marginal note and substituting therefor the following marginal note—

“Appointment of Land Registrars and other officers”

(b) inserting the words “a Deputy Chief Land Registrar, County Land Registrars, Land Registrars” immediately after the words “Chief Land Registrar”.

9. The Land Registration Act is amended by the following new section immediately after section 13—

Insertion of new section 13A in No. 3 of 2012.

Qualifications for appointment of other land Registrars.

13A.(1) A person shall not qualify for appointment as Deputy Chief Land Registrar unless such a person is an Advocate of the High Court of Kenya of not less than ten years’ standing.

(2) A person shall not qualify for appointment as a County Land Registrar unless such a person is an Advocate of the High Court of Kenya of not less than five years’ standing or an Advocate of the High Court with at least five years’ experience in land administration.

(3) A person shall not qualify for appointment as a Land Registrar unless such a person is an Advocate of the High Court of Kenya.

(4) Upon appointment, the Registrar shall take an oath of office in the prescribed form.

(5) Upon the commencement of this Act, any person holding the position of Chief Land Registrar, and Land Registrars who do not meet the qualifications prescribed in this Act shall be redeployed to other positions and duties within the public service.

10. Section 14 of the Land Registration Act is amended by—

Amendment of section 14 of No. 3 of 2012.

- (a) renumbering section 14 the existing provision as subsection (1);
- (b) inserting the following new subsections immediately after the renumbered subsection (1)—

“(2) In addition to the powers conferred by section 14(1) the Chief Land Registrar shall—

- (a) formulate practice instructions and guidelines for implementation of the land registration policies and strategies;
- (b) set standards for the registries;
- (c) supervise the registries;
- (d) prepare and submit an annual report on the state of land registration to the Commission and the Cabinet Secretary;
- (e) hear and determine appeals from the registries;
- (f) approve the format of any instrument which is not in accordance with the prescribed form; and
- (g) perform such other functions or duties as may be provided under any written law.”

(3) The Deputy Chief Land Registrar shall be the principal assistant of the Chief Land Registrar in the execution of the functions of the Chief Land Registrar.

(4) The County Land Registrar shall be responsible for administering the registries within the respective County and in the implementation of policies, guidelines and strategies in accordance with this Act.

(5) The Registrar shall not be held personally liable for lawful acts discharged by the Registrar under this Act in good faith.”

11. Section 16 of the Land Registration Act is amended—

Amendment of
section 16 of No.
3 of 2012.

- (a) in subsection (1) by deleting the words “and such correction shall not be effected except on the instruction of the Registrar, in writing,” appearing immediately after the words “subdivision plan” and substituting therefor the words “approved combination plan or any other approved plan necessitating the alteration of the boundary”;
- (b) in subsection (2), by deleting the words “Notwithstanding subsection (1), any alteration and shall be made public and”
- (c) by inserting the following new subsection immediately after subsection (3)—

“(4) Any rectification to the cadastral map in accordance with this section shall be notified to the Registrar by the submission of the rectified cadastral map and all the approvals that necessitated the amendments.”

12. The Land Registration Act is amended in section 17 by deleting subsection (3) and substituting therefor the following—

Amendment of
section 17 of No.
3 of 2012.

“(3) The office or authority responsible for the survey of land shall submit to the Commission a copy of the cadastral maps relating to public land and the Commission shall be a depository of the maps.”

13. Section 18 of the Land Registration Act is amended by deleting subsection (3) and substituting therefor the following new subsection—

Amendment of
section 18 of No.
3 of 2012.

“(3) Except where it is noted in the register that the boundaries of a parcel have been fixed—

- (a) boundary disputes requiring determination by survey techniques such as the re-establishment of a missing boundary or re-alignment of a boundary shall be determined by the authority responsible for the survey of land;
- (b) any other disputes involving a parcel of land, except those related the registration of the parcels, shall be determined through Alternative

Dispute Resolution mechanisms, with the help of the authority responsible for survey of land in cases where boundaries may need to be altered;

- (c) in cases where dispute involves issues of registration, the dispute shall be determined by the Registrar;
- (d) the case of paragraph (a), (b), or (c), determination of a boundary and or parcel dispute shall be completed within a period not exceeding six months from the date of filing the dispute;
- (e) disputes relating to boundaries shall be filed with the authority responsible for survey while other land disputes shall at the Court.”

14. Section 19 of the Land Registration Act is amended—

Amendment of section 19 of No. 3 of 2012.

- (a) in subsection (1) by deleting the words “give notice to the owners an occupiers of land adjoining the boundaries in question of the intention to ascertain and fix the boundaries” and substituting therefor the words “request the authority responsible for land survey to ascertain and fix the boundaries”;
- (b) in subsection (2) by deleting the words “after giving all persons appearing in the register an opportunity of being heard, cause to be defined by the survey, the precise position of the boundaries in question” appearing immediately after the word “shall” and substituting therefor the words “after receiving an approved plan from the office or authority responsible for land survey showing and confirming that the boundaries in question have been fixed”.

15. Section 26 of the Land Registration Act is amended—

Amendment of section 26 of No. 3 of 2012.

- (a) deleting the marginal note and substituting therefor with the following—
“Challenge to entries in the Register”;
- (b) deleting subsection (1) and substituting therefor the following section—

(1) The rights of a proprietor, whether acquired on first registration or subsequently including through an order of court shall not be liable to be defeated except on the grounds—

- (a) of fraud or misrepresentation to which the person is proved to be a party; or
- (b) that the rights of the proprietor have been acquired illegally.

16. Section 28 of the Land Registration Act is amended by—

Amendment of section 28 of No. 3 of 2012.

- (a) deleting paragraph (a);
- (b) deleting paragraph (b);
- (c) deleting paragraph (f) and substituting therefor the following—
- (d) short term lease where the lessees are in actual occupation;
- (e) deleting paragraph (j);
- (f) inserting the following new proviso to the section—

Provided that the Registrar may direct the registration of any of the liabilities, rights and interests hereinbefore defined in such manner as the Registrar deems necessary.

17. Section 30 of the Land Registration Act is amended—

Amendment to section 30 of No. 3 of 2012.

- (a) in subsection (1) by inserting the words “whose name appears in the register immediately after the words “proprietor of land”;
- (b) in subsection (2)(b) by deleting the expression “twenty-five” and substituting therefor the expression “twenty-one”.

18. Section 33 of the Land Registration Act is amended—

Amendment of section 33 of No. 3 of 2012.

- (a) in subsection (1) by deleting the word “duplicate” appearing immediately after the word “issue of a” and substituting therefor with the word “replacement”;
- (b) in subsection (3) by deleting the word “duplicate” appearing immediately after the word

“issue a” and substituting therefor the word “replacement”;

- (c) in subsection (4) by inserting the words “damaged or destroyed ” immediately after the word “lost”;
- (d) inserting the following new subsection (6)—

(6) Upon the issue of a replacement certificate no further dealings shall be carried out using the replaced certificate.

19. Section 35 of the Land Registration Act is amended—

Amendment of section 35 of No. 3 of 2012.

- (a) in subsection (1) by deleting the words “purporting to be” appearing immediately after the word “document”;
- (b) in subsection (4) by deleting the words “and any such process, if issued, shall bear thereon a statement that it is issued with leave of Court” appearing immediately after the word “suffice”.

20. Section 36 of the Land Registration Act is amended—

Amendment of section 36 of No. 3 of 2012.

- (a) by deleting subsection (3) and substituting therefor the following subsection—

(3) Where an instrument presented for registration later than three months from the date of the instrument, then, as well as registration fee, and additional fee equal to the registration fee shall be payable for each of the three months which have elapsed since that date:

Provided that—

- (i) in no such case shall the sum of the additional fees, exceed five times the original registration fees payable;
 - (ii) the Chief Land Registrar may exercise discretion to remit any additional fee payable by virtue of this section in whole or in part.
- (b) by inserting the following new subsections immediately after subsection (4)—

(5) The Registrar may, if satisfied that any person through willful default, has failed to register any instrument which is registerable under this Act, by notice in writing, order such person to present such instrument for registration, and together with the registration fees and any additional fee payable under subsection (4) which shall become due and payable whether the instrument is presented for registration or not.

(6) A person who fails to comply with an order of the Registrar under subsection (4) within one month of the service of the notice commits an offence and shall be liable, on conviction, to a fine not exceeding one thousand shillings.

(7) The Registrar may put a restriction on the register forbidding further registration until the instrument required to be registered under subsection (5) is presented for registration.

(8) Interests appearing in the register shall have priority according to the order in which the instruments which led to their registration were presented to the registry, irrespective of the dates of the instruments and notwithstanding that the actual entry in the register may be delayed:

Provided that where an instrument is prepared in the registry, it shall be deemed to have been presented on the date which the application was made to the Registrar.

(9) Instruments sent by post or under cover and received during the hours of business shall be deemed to be presented simultaneously immediately before the closing of office that day, and instruments so sent but received between the time of closing and the next opening of the office for business shall be deemed to be presented simultaneously immediately after such opening.

(10) Where more than one instrument or application are presented on the same day, or on different days but at so short an interval from each other that in the opinion of the Registrar there is doubt as to their order of priority, the

Registrar may refuse registration until the Registrar has heard and determined the rights of parties interested.

(11) Where any person proposing to deal with registered land has, with the consent in writing of the proprietor, applied for official search and has stated in his application the particulars of the proposed dealing, the registration of any instrument affecting the land to be comprised in or affected by the proposed dealing shall be stayed for a period (hereinafter referred to as the suspension period) of fourteen days from the time at which application for the search was made, and a note shall be made in the register accordingly.

(12) If a properly executed instrument affecting the proposed dealing is presented for registration, within the suspension period, the instrument shall have priority over any other instrument which may be presented for registration during the suspension period, and shall be registered notwithstanding any caution or any other entry for which application for registration may have been made during the suspension period.

(13) Subject to the subsection (12), any instrument or document for which application for registration is made during the suspension period other than that affecting the proposed dealing shall be dealt with in the same manner, shall have the same priority and shall be as effectual as if no stay of registration had been obtained.

(14) Where on the registration of an instrument relating to a disposition under this Act, the interests of—

- (a) a lessor and lessee;
- (b) chargor and chargee, or
- (c) the proprietor of a parcel which is burdened with an easement, a profit or restrictive agreement and the proprietor of a parcel which benefits from the easement, profit and agreement, vests in the same proprietor,

the interests shall not merge unless a surrender or discharge is registered or the parcels are combined or there is a declaration of merger, which may be contained in the instrument evidencing the disposition.

21. Section 38 of the Land Registration Act is amended—

Amendment of
section 38 of No.
3 of 2012.

- (a) in subsection (1) by deleting the words “purporting to transfer or to vest” appearing immediately after the word “instrument” and substituting therefor with the words “transferring or vesting”;
- (b) in subsection (2) by deleting paragraph (a).

22. Section 39 of the Land Registration Act is amended by—

Amendment of
section 39 of No.
3 of 2012.

- (a) by deleting sub section (2) and substituting therefor the following subsection—

(2) No certificate shall be required under subsection (1) if the instrument relates to a sublease where the lease is by virtue of any law subject to full payment of the rent by the head-
lessor.

- (b) by inserting the following new subsections immediately after subsection (2)—

(3) Where there is a condition under any law requiring consent to be obtained prior to the creation of a disposition, the Registrar shall not register an instrument effecting a transaction unless there is proof that the consent has been obtained.

(4) The Registrar may dispense with such consent—

- (a) in a case where the consent is required pursuant to a contractual obligation and the Registrar is satisfied that such consent cannot be obtained;
- (b) in any other case pursuant to a court order.

(5) The Registrar shall record in the Register the reasons for dispensing with such consent.

23. Section 43(2) of the Land Registration Act is amended by deleting the word "private land" appearing immediately after the word "disposition of" and substituting therefor with the words "an interest in land".

Amendment of section 43 of No. 3 of 2012.

24. Section 44 of the Land Registration Act is amended—

Amendment of Section 44 of No. 3 of 2012.

(a) deleting subsection (3) and substituting therefor the following—

(3) The execution of any instrument referred to in section (1) by a corporate body, association, cooperative society or other organisation shall be effected in accordance with the provisions of the relevant applicable law and in the absence of provisions on execution of instruments, the execution shall be effected in the presence of either an advocate of the High Court of Kenya, a magistrate, a Judge or a notary public.

(b) deleting subsection (4) and substituting therefor the following subsection—

(4) An instrument executed outside Kenya shall not be registered unless it has been endorsed or is accompanied by a certificate in the prescribed form completed by a notary public or such other person as the Cabinet Secretary may prescribe.

(c) in subsection (5) by inserting the following paragraph (e) immediately after paragraph (d)—

(e) a copy of the certificate of incorporation, in the case of a corporate entity; o

25. Section 54 of the Land Registration Act is amended by—

Amendment of section 54 of No. 3 of 2012.

(a) in subsection (1) by deleting the word "leased" appearing immediately after the word "leased land";

(b) in subsection (2) by inserting the following new paragraph immediately after paragraph (b)—

(c) on any of the grounds set out under section 39(4).

(c) inserting the following new subsection immediately after subsection (5)—

(6) The Cabinet Secretary may prescribe regulations for the registration of long term-leases.

26. Section 55 of the Land Registration Act is amended by deleting the words “lessee that the lessee” appearing immediately after the words “by the” and substituting therefor the phrase “lessor that the lessor”;

Amendment of
Section 55 of no.
3 of 2012.

27. Section 56 of the Land Registration Act is amended—

Amendment of
Section 56 of No.
3 of 2012.

(a) in subsection (4) by deleting the words “to him or her” appearing at the end of subsection (4);

(b) by inserting the following new subsection immediately after subsection (5)—

(5A) No certificate shall be required under subsection (4) if the charge relates to—

(a) a unit in a condominium;

(b) an office in a building; or

(c) a sub-lease where the lease is by virtue of any law subject to the full payment of the rent by the head-lessor.

(c) in subsection (6) by deleting the words “chargee of his or her” appearing in subsection (6) immediately after the word “exercise of the” and substituting therefor the word “chargee’s”.

28. Section 57(2) of the Land Registration Act is amended in section by deleting the word “charge” appearing immediately after the word “first” and substituting therefor the word “chargee’s”.

Amendment of
section 57 of No.
3 of 2012.

29. Section 76 of the Land Registration Act is amended—

Amendment of
section 58 of No.
3 of 2012.

(a) in subsection (2) by deleting the words “the making” appearing in paragraph (c);

(b) inserting the following new subsection immediately after subsection (2)—

(2A) A restriction shall be registered in the register and may prohibit or restrict either all dealings in the land or only those dealings which do not comply with specified conditions.”

30. Section 77(2) of the Land Registration Act is amended by deleting the word “it” appearing immediately after the word “with” and substituting therefor with the words “a restriction”.

Amendment of Section 77 of No. 3 of 2012.

31. Section 78(1) of the Land Registration Act is amended by deleting the word “that” appearing after the word “order”.

Amendment of Section 78 of No. 3 of 2012.

32. Section 79 of the Land Registration Act is amended—

Amendment of Section 79 of No. 3 of 2012.

(a) in subsection (1)—

(i) by inserting the word “mistakes” immediately after the word “errors” appearing in paragraph (a);

(ii) inserting the following new paragraphs immediately after paragraph (c)—

(d) for purposes of updating the register;

(e) for purposes of correcting the name, address or other particulars of the proprietor upon the written application by the proprietor in a prescribed form.

(b) by deleting subsection (2) and substituting therefor the following subsection—

(2) No alteration affecting the title of the proprietor may be made pursuant to sub-section (1) without the proprietor’s consent unless—

(a) the proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission; or

(b) it would for any other reason be unjust for the alteration not to be made.

(c) by deleting subsection (3) and substituting therefor the following subsection—

(3) A person aggrieved by the decision of the Registrar under this section may apply to the Court for any necessary orders.