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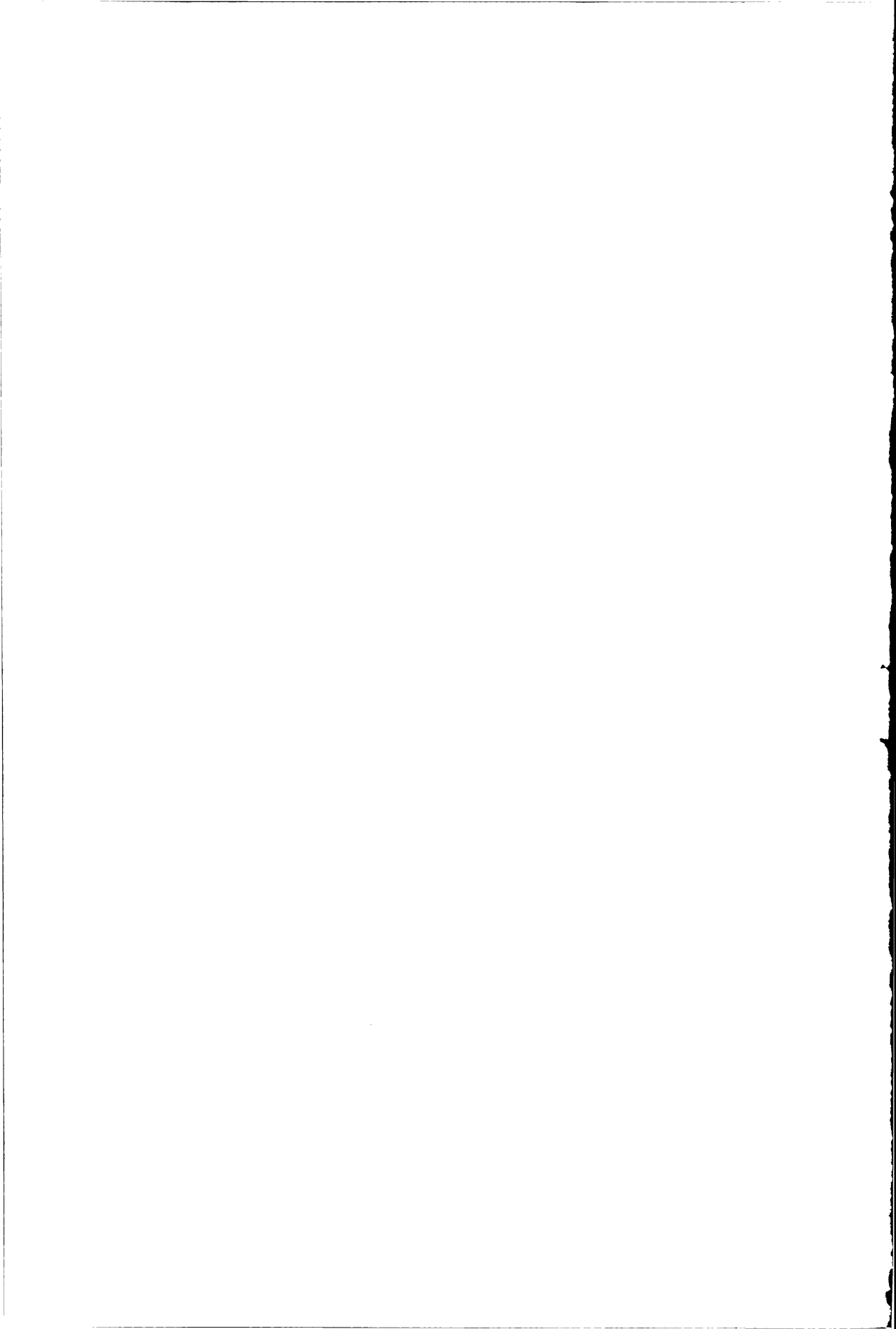
ACTS, 2016

NAIROBI, 7th September, 2016

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NATIONAL COUNCIL FOR LAW REPORTING
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THE LAND LAWS (AMENDMENT) ACT, 2016**No. 28 of 2016***Date of Assent: 31st August, 2016**Date of Commencement: 21st September, 2016*

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, 2016.

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 the word “means” and substituting therefor the word “includes”;

- (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;

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- (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—

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

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- (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;

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“easement” has the same meaning assigned in the Land Act, 2012;

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

“eviction” means the act of depriving or removing a person from the possession of land or property which they

hold unlawfully either executed upon a successful law suit or otherwise;

“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 by—

- (a) in subsection (1), by deleting the words “Commission in consultation with national and county governments may” and substituting therefor the words “Cabinet Secretary in consultation with the Commission and the county governments shall”;

Amendment of
section 6 No. 3 of
2012.

- (b) in subsection (5) by deleting the word “Commission” appearing immediately after the words “by the” and substituting therefor with the word “Cabinet Secretary”;
- (c) in subsection (6) inserting the following new subsection immediately after subsection (6)—

(7) For purposes of administration and effective land management, the county governments shall have access to all documents maintained in the registration units.

4. 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;
 - (c) the encumbrance section;
 - (d) the user of the land; and
 - (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.

5. 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.

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

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”.

7. The Land Registration Act is amended by inserting 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, a land surveyor, a land economist or an expert in any other relevant field.

(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, a land surveyor, a land economist or an expert in any other relevant field.

(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, a land surveyor, a land economist or an expert in any other relevant field.

(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.

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

Amendment of
section 14 of No. 3
of 2012.

- (a) renumbering the existing section 14 as 14 (1);
 - (b) inserting the following new subsections immediately after 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.

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9. 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.

10. 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.

11. 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 (f);
- (c) 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.

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

Amendment to section 30 of No. 3 of 2012.

- (a) in subsection (1) by deleting the words “or a lease” and substituting therefor the words “whose name appears in the register or a lease”;

- (b) in subsection (2)(b) by deleting the expression “twenty-five” and substituting therefor the expression “twenty-one”.

13. 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) by 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.

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

Amendment of
section 36 of No. 3
of 2012.

- (a) by deleting subsection (4) and substituting therefor the following subsection—

(4) 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 in no such case shall the sum of the additional fees, exceed two times the original registration fees payable;

- (b) by inserting the following new subsections immediately after subsection (4)—

(5) 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.

(6) 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.

(7) Where more than one instrument or application are presented on the same day such that in the opinion of the Registrar there is doubt as to their order of priority, the Registrar shall reject the registration and shall inform the applicants of such rejection.

(8) 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.

(9) 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

Provided that upon commencement of the Act, any instrument that shall not have been registered will be required to be so registered

within three months.

(10) 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.

15. 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 (b).

16. Section 39 of the Land Registration Act is amended in subsection (2) by deleting the words “relevant County Land Management Board” and substituting therefor the words “national or county government”.

Amendment of section 39 of No. 3 of 2012.

17. 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.

18. 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 subsection—
 - (3) The execution of any instrument referred to in section (1) by a corporate body, association,