



COMMONWEALTH
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WOMEN'S LAND RIGHTS HANDBOOK

KENYA





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LAND RIGHTS
HANDBOOK

KENYA

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Foreword

Across Africa, land is integral to identity and existence. Access to and ownership of land for women is often problematic, particularly when the law and culture collide. Land issues, including family property matters, are often determined within entrenched cultural norms where a hybrid legal interpretation of both customary and national law is applied.

In spearheading efforts to secure women's rights to land in Africa, the Commonwealth Secretariat focuses on reconciling customary norms with more formal judicial processes, national laws and international and regional human rights standards to address both policy imperatives and realities on the ground.

Between 2006 and 2010, the Commonwealth Secretariat, under the mandate provided by the Commonwealth Plan of Action for Gender Equality 2005–2015, conducted a series of regional and national meetings and training sessions in Cameroon, Namibia, Kenya and Nigeria to address the issue of women's rights, culture and the law. These interventions drew on the rich experience of local and national officials, women activists, traditional leaders, judges and rural and indigenous women.

One outcome arising from the meetings was the development of a legal handbook for use in four Commonwealth African jurisdictions – Cameroon, Kenya, Nigeria and Sierra Leone – in order to specifically inform women, especially rural women, lay

magistrates and traditional chiefs on the various laws and legal processes relating to property matters, including women's access to and ownership of land. Dr Meena Shivdas (Gender Adviser) and Ms Sarah Coleman (Legal Officer) co-ordinated the Secretariat's work on women's land rights. Ms Allison Lindner provided valuable research assistance.

The Secretariat is grateful to Hon. Justice Sarah Oneyo-Omolo (Kenya), Hon. Justice Florence Awasom (Cameroon), Hon. Justice Nyawo Finda Matturi Jones (Sierra Leone) and Hon. Justice Chima Centus Nweze (Nigeria) for technical guidance on the framework for the handbooks. The Secretariat is also grateful to Justice Sarah Oneyo-Omolo, the legal expert who provided the technical input for this handbook.

We hope this resource will assist in the identification and dissemination of applicable national laws and relevant regional and international human rights standards, as well as the appropriate legal practices/procedures relating to land and other property rights in Kenya, particularly for those women caught between culture and the law.

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September 2013

Introduction

All human beings are born free and equal in dignity and in rights and have the right to own property alone or in association with others.¹

Kenya is a member of the international community and a signatory to various international and regional human rights instruments.

These instruments, in line with the Universal Declaration of Human Rights (UDHR)², establish the principle of equality of all members of the human race and proscribe discrimination on grounds of sex, among others. Following the UDHR (1948), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)³, the African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR)⁴ among others, establish the following human rights principles and standards with regard to women's rights:

- Equality of men and women before the law
- Equality in rights during marriage and at its dissolution
- The right of every person to enjoy protection of the law on a basis of equality and without discrimination on grounds of sex
- The right to own property alone or in association with others; this includes the right to own and access land.

By acceding to the above and many other human rights instruments, Kenya undertook to comply with international

1 Universal Declaration of Human Rights, Articles 1 and 17

2 Adopted and proclaimed by the General Assembly resolution 217A(III) of 10 December 1948

3 General Assembly resolution A/Res/34/180 ratified by Kenya on 9 March 1984

4 General Assembly resolution 220A(XXI), UN Doc A/6316 (1966) ratified by Kenya on 1 May 1972

human rights standards set out in those instruments and to do the following things:

- Embody the principle of equality of men and women in the national constitution and in legislation in line with the requirement of CEDAW Article 2(a)
- Eliminate discrimination against women in general, particularly in marriage relations, and ensure equality in rights for both spouses regarding ownership, acquisition, management and disposition of property including land (CEDAW Article 16 (h))
- Adopt legislative measures to proscribe discrimination against women, particularly those in the rural areas, to enable them participate in and benefit from rural development; this is in line with CEDAW Article 2.
- Ensure that rural women have access to agricultural credit/loans and that women do not suffer discrimination in the area of land reforms and land ownership in settlement schemes (CEDAW Article 2).

Implementation of International Obligations – The Constitution of Kenya 2010

The National Land Policy (NLP)⁵, which was enacted before the Constitution of Kenya 2010, mainstreamed gender and recommended constitutional guarantees to ensure the protection of human rights of all the people of Kenya and, in particular, to provide protection against laws, customs and practices which discriminate against women in the area of land rights. The Bill of Rights provides for equality of all persons.⁶ This equality includes

the right of men and women to enjoy all fundamental rights and freedoms, including land ownership and access thereto on a basis of equality. Discrimination on account of sex is prohibited.

The Constitution in Article 21 requires the state to enact legislation in fulfillment of its international obligations in respect of human rights and fundamental freedoms. Such legislation has not been enacted and the Constitution does not give a timeframe within which this legislation should be enacted. However, the general rules of international law form part of the law of Kenya under the Constitution⁷ and as such any treaty or convention ratified by Kenya forms part of the law of Kenya.⁸

Prior to the enactment of the current Constitution, land tenure in Kenya was governed by a multiplicity of laws. The scenario changed with the enactment of the Land Act No. 6 of 2012, which revised and consolidated the old laws.

The Land Registration Act No. 3 of 2012 revised, consolidated and rationalised the registration of titles to land in order to give effect to the principles of devolved government. The following land laws, which have now been repealed, are some of the laws that have governed land tenure since independence:

- Registered Land Act – RLA⁹ – RLA
- Government Lands Act – GLA¹⁰ – GLA

5 Available at <http://www.kenyalaw.org>

6 Constitution of Kenya 2010, Article 27

7 Constitution of Kenya 2010, Article 2(5)

8 Constitution of Kenya, Article 2(6)

9 Chapter 300, Laws of Kenya (now repealed)

10 Chapter 280 of the Laws of Kenya (Former Crown Lands Act) (both repealed)

- Registration of Titles Act – RTA¹¹
- Land Titles Act – LTA¹²
- Indian Transfer of Property Act 1882 – TPA
- Way Leaves Act Cap 292¹³
- Land Acquisition Act¹⁴

This Handbook will focus on the various ways through which women and all Kenyans can acquire, access or own land. The Handbook will also focus on the judicial and administrative processes through which women in Kenya can acquire and realise their land rights. This is important since the enactment of the Constitution in 2010 and the new land laws in 2012 has completely transformed land management and administration in the country. With a new Constitution in place and the enactment of new land laws, this Handbook should help in creating awareness which will encourage women to arise and claim their land rights. The book will also serve as a reference point for all relevant actors working towards the achievement, by women, of their rights to land.

11 Chapter 281 of the Laws of Kenya (now repealed)

12 Chapter 282 of the Laws of Kenya (now repealed)

13 Chapter 292 of the laws of Kenya (now repealed)

14 Chapter 295 of the Laws of Kenya (now repealed)

Section 1:

will consider types of land ownership and the ways in which different forms of title and interests in land are registered, with provisions specific to agricultural land as well as the adjudication of land disputes.

Section 2:

will consider how family law impacts on land rights in Kenya by covering matrimonial property upon divorce, testate and intestate succession, polygamy and the rights of succession of children.

Section 3:

elaborates on the judicial and administrative processes for compulsory acquisition of land and compensation; cautions and dispositions affecting land.

Section 4: Case Law

4 will consider case law covering all aspects of women's land rights in Kenya as set out in the previous sections.

What is the highlighted text?

Some words in this handbook are quite difficult. We have made these words stand out on the page, like this: **word**. You will find an explanation for these words in the boxes called 'Words you need to know'. We have also highlighted any mention of legislation, constitutional provisions and international and regional human rights instruments for ease of reference. At the beginning of each section you will also find a list of the relevant laws discussed.

Relevant legal provisions

Constitution

2010 Constitution of Kenya

Article 40, Constitution of Kenya 2010

Article 61, Constitution of Kenya 2010

Article 63, Constitution of Kenya 2010

Article 65, Constitution of Kenya 2010

Domestic Laws

Environment and Land Court Act No. 19 of 2011

Land Act No.6 of 2012

Land Adjudication Act Revised 2009 (1977)

Land Control Act Revised 2010 (1989)

Land (Group Representatives) Act Revised 2012 (1970)

Land Registration Act No.3 of 2012

Law of Succession Act Revised 2010 (1981)

Limitations of Action Act Revised 2007 (2003)

International Laws

International Covenant on Civil and Political Rights

Accession 1 May 1972

International Covenant on Economic, Social and Cultural Rights

Accession 1 May 1972

Convention on the Elimination of All Forms of Discrimination against Women

Accession 9 March 1984

African Charter on Human and Peoples' Rights

Ratified 23 January 1992

Optional Protocol to the African Charter on Human and Peoples' Rights

Signed 17 December 2003



*Section 1:
Land Ownership and
Registration of Title*



Section 1: Land Ownership and Registration of Title

Domestic Legal Provisions Related to Land Ownership and Registration of Title

Land Act No.6 of 2012 (2012)

Land Adjudication Act Revised 2009 (1977)

Land Control Act Revised 2010 (1989)

Land Registration Act No.3 of 2012

Limitations of Action Act Revised 2007 (2003)

Land (Group Representatives) Act – Chapter 287

According to Article 61 of the Constitution of Kenya 2010 all land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals. The Constitution proceeds to classify land as public, community or private land.¹⁵ In mainstreaming gender, Article 60 of the Constitution provides that land holding, use and management must promote the principles of **equitable access** and security of land rights while upholding the **elimination of gender discrimination** in law, customs and practices related to land ownership and property in land.

15 Art 61

Section 5 of the Land Act provides for various forms of land **tenure**, namely **freehold**, leasehold, **customary land tenure** and other **partial interests**, including but not limited to **easements** and **licenses**. Section 20(1) of the Land Act **empowers** the National Land **Commission** (the **Commission**) to issue **licenses** for temporary occupation of public land for a period not exceeding 5 years.

Section 5 of the Land Act provides for equal recognition and **enforcement** of land rights arising under all of the above **tenure** systems as well as non-discrimination in ownership of and access to land under all **tenure** systems.

1(a): Forms of Land Tenure

Freehold Tenure

This is the largest quantity of land rights which the **state** can **grant** to an individual owner of private land. **Freehold tenure confers absolute rights** of land use and **disposition**. However, these rights are subject to **spousal rights** over **matrimonial property**¹⁶ and trusts including customary trusts,¹⁷

among other **overriding interests** specified in section 28 of the Land Registration Act No. 3 of 2012 (LRA).

Leasehold Tenure

This form of **tenure confers** upon a **proprietor** the right to use land for a specified period of time in exchange of certain **obligations**, such as payment of rent and **rates**. This kind of **tenure** is applicable to both public and private land ownership. If the leasehold **tenure** is in respect of public land, the **Commission** is required by section 36 of the Land Act to publish a notice of the availability of public land for use through lease or agreement. The publication shall be made in the **Gazette** and in at least two daily newspapers of nationwide circulation. Such notice shall call upon interested persons to submit applications.

At the **expiration** of a leasehold **tenure** over public land, if the land is not required for public purposes section 13 of the Land Act **empowers** the **Commission** to offer the immediate past

¹⁶ Land Registration Act No. 3 of 2012, section 28(a)

¹⁷ See number above 16 section 28(b)

leaseholder **pre-emptive rights** to allocation of that land. However, this provision will only apply if the immediate leaseholder is a Kenyan citizen.

Periodic Leases – Section 57 of the Land Act

A periodic lease is created in any of the following instances:

- a) If the term of the lease is not specified and there is no provision for the giving of notice to **terminate** the tenancy;
- b) If the lease is with regard to **agricultural land**, a periodic lease shall be for a period of six months;
- c) If at the **expiration** of any lease the **lessee** remains in possession with the **consent** of the **lessor** in the absence of an agreement as to the period of such continued possession, a periodic lease is created;
- d) If the owner of a piece of land allows any person exclusive occupation of the land at a rent and the lease agreement is not in writing.¹⁸

Termination of Periodic Tenancy/Lease – Section 57 (4) of the Land Act

A periodic tenancy may be **terminated** by either party giving notice of not less than the period of the tenancy, to expire on the date rent is payable.

¹⁸ The Land Act No. 6 of 2012, section 57(2)

Short Term Leases – Section 58 of the Land Act

A person can become entitled to land by way of a short-term lease. A short-term lease may be made orally or in writing and such a lease is not a **registrable interest** in land. A lease is short-term if it is for a period of 2 years or less and contains no **option** of renewal. Periodic leases that are not in writing also fall under this category of rights.

License for Temporary Purposes

Whenever public land becomes available for use through **license** or agreement, section 36 of the Land Act **empowers** the **Commission** to publish a notice of such availability inviting those interested to submit their applications for **consideration**. Publication of such notice shall be made in the **Gazette** and at least two daily newspapers of nationwide circulation.

Section 20 of the Land Act **empowers** the **Commission** to **grant** a person a **license** to use **unalienated** public land for a period not exceeding 5 years. Such **license** may be issued upon such conditions as may be **prescribed** therein. The **licensee** may, with the **consent** of the **Commission**, **transfer** the benefit of the **license** to another person. The **transfer** and **consent** shall be endorsed on the **license**.

Termination of License for Temporary Purposes

Such **license** may be **terminated** by the **Commission**:

- a) If the **licensee** defaults in payment of rent for one month from the date when it became payable;

- b) If the **licensee** is in **breach** of any term or condition of the **license**;
- c) By a notice issued by the **Commission** any time after the **expiration** of nine months from the date of the **license**.

Customary Land Rights and Trusts

This form of **tenure** was practiced prior to the advent of colonialism where land ownership, access and control depended on a socially and culturally known and accepted arrangement among the members of any given community.

African customary laws in Kenya generally have a concept of a trust inherent in them. Under this form of **tenure**, land belonged to the community as a whole and members of the community have rights of access and use.

Customary land rights of ownership and access, in so far as they are consistent with the Constitution, are a recognised form of **tenure**. This form of **tenure** is still practiced in former trust land areas where **land adjudication, consolidation** and registration have not taken place.

The case of **Mukangu v Mbui**¹⁹ demonstrates that although customary law rights in land are **extinguished** upon registration of the land, **interests** which arise in right only of possession or actual occupation, without legal title, are equitable rights binding on the land and the registered **proprietor** as they create a trust in favour of the occupant of such land.

19 The Land Act No. 6 of 2012, section 57(2)

Section 3 of the Judicature Act provides for the application of customary law to resolve disputes of a civil nature where one or all the parties are affected by such customary law. The customary law applicable must however not be **repugnant** to justice or morality or **inconsistent** with written law.

Words you need to know

absolute rights unlimited rights

agricultural land land used for agricultural purposes which is not within a municipality, a township or a market

breach contravene or violate

Commission the National Land Commission

confer give, grant, bestow

consent approval or permission

consideration payment in cash or by some other means

customary land tenure ownership whose rights are derived from Kenyan customary law, whether formally recognised by legislation or not

disposition any sale, charge, transfer, grant, partition, exchange, lease, surrender and includes a usufructuary rights in land or a lease and any other act by the owner of a land or under a lease where the owner's rights over that land or lease are affected

easement is a non-possessory interest in another person's land allowing the holder to use the land to a particular extent or restricting the proprietor's use of the land to a particular extent

elimination removal, abolition, eradication

empower authorise

enforcement implementation

equitable access fair and unbiased right to use

expiration conclusion or termination

extinguish invalidate or cancel

freehold the unlimited right to use and dispose of land subject to the rights of others

Gazette the Kenya Gazette or County Gazette

gender discrimination biased treatment of a person because the person is female or male

grant allow

inconsistent not in agreement or contradictory

interest right or entitlement

land adjudication administrative process of ascertaining land rights through arbitration

land consolidation administrative process, considered economical, of merging or combining small pieces of land for purposes of registration under one title

lessee a person to whom a lease is granted or a person who has accepted a transfer of a lease

lessor 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

license permit, authorisation or permission given by the National Land Commission in respect of public land, or by the proprietor in respect of private or community land, or a lease allowing the licensee to do some act in relation to the land subject matter of the lease which would otherwise be a trespass

matrimonial property property acquired during marriage

obligation duty or responsibility

option the freedom or right to choose

overriding interests a right to property

partial interests rights that are limited

prescribed set or approved

proprietor in relation to land, a lease means the person named in the register is the owner; in relation to a charge of land or a charge of a lease means the person named in the register of the land or lease as the person in whose favour the charge is made.

pre-emptive rights rights afforded to persons with an interest in land before they are offered to the general public

rates duty or taxes

registrable capable of being registered

repugnant goes against

spousal rights rights deriving from marriage

state government

tenure occupancy or possession

terminate end

transfer 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. In addition, a transfer is the instrument by which such passing is effected

unalienated not able to have the ownership transferred

1(b): Methods of Acquisition of Title to Land²⁰

All Kenyans without discrimination as to sex can **acquire** title or an **interest** in land through any of the methods discussed below:

Allocation of Public Land²¹

Title to land may be **acquired** through direct allocation of public land by the **Commission**, on behalf of the national and county governments.

The allocation may, among other ways, be by public auction to the highest bidder and subject to the reserved price, or on application confined to a particular group to **ameliorate** their landlessness. Before such allocation, the **Commission** must issue a notice of intention to the public and interested parties at least 30 days before offering public land for allocation, failing which the allocation shall be **void**.

Purchase and Transfers²²

Women, like any other Kenyan, can **acquire** title to land by purchasing land on the open market. All agreements for the sale or purchase of land must be in writing, signed by the parties and witnesses. A **proprietor** of any land, lease or **charge** can **transfer** the same to any person with or without **consideration** by signing the **transfer** instrument and filing the instrument at the Lands Registry upon payment of a fee **prescribed** by the **Commission**. The **transfer** is completed upon registration of the **transferee** as **proprietor**.

20 The Land Act No. 6 (2012), section 7

21 See no. 22 above, section 12

22 Land Registration Act No. 3 (2012), section 37 and The Land Act No. 6 (2012) section 43

Land Adjudication Process

This is a process under the Land Adjudication Act²³ carried out to ascertain rights and **interests** of those claiming to have such rights and **interests** in trust land areas. **Adjudication** transforms ownership from customary **tenure** to individual **tenure** through demarcation, survey and registration of title.

Prescription or Adverse Possession

Under the Limitation of Actions Act²⁴ a person will **acquire** a **registrable interest** in a particular piece of land through **adverse possession** of the land. Any person who claims to be entitled to land by **adverse possession**/prescription can apply to the **Court** for an order that she/he be registered as the **proprietor** of that land. The **Claimant** must prove that he/she has been in exclusive possession of the land openly, as of right and without interruption, for a period of 12 years, either after dispossessing the owner or after the owner discontinued possession of **his own volition**. Refer to **Kanda Kimamet v Chepkiyeng Kimamet (kimamet) Chebobei [2009] eKLR. Eldoret HCCC 218/2000**).

Settlement Programmes

Another way of acquiring title to land is through land settlement programmes by the government. Section 134 of the Land Act **empowers** the **Commission**, acting on behalf of national and county governments, to implement settlement programmes and provide access to land for shelter and livelihood. These programs are meant to benefit **squatters**, those displaced by conflicts or

other causes, and any other landless Kenyans. The beneficiaries of such programmes are identified by sub-county selection committees where women have representation.

Section 34 of the Land Act empowers the Commission to reserve public agricultural land or to purchase private land for resettlement of the landless. The process involves the reservation of public land or the purchase of private land by the Commission, demarcation and registration of each portion in the name of a landless person. At the end of the process, the landless take possession of the demarcated portions, duly registered with a title deed.

Transmissions on Death of Joint Proprietor (Joint Tenancy) – Section 60 of the LRA

When land is registered in the names of two or more persons, the proprietors are referred to as joint tenants or tenants in common. An instrument in favour of such proprietors and the registration giving effect to that instrument must show:

- a) Whether the proprietors are joint tenants or tenants in common;
- b) The share of each tenant if they are tenants in common.

However, with effect from the effective date,²⁵ except with the leave of Court, the only joint tenancy that is capable of being created is between spouses. Any joint tenancy other than that between spouses, purported to be created without the leave of a Court, shall be deemed to be a tenancy in common.²⁶

23 Chapter 284 of the Laws of Kenya

24 Chapter 284 of the Laws of Kenya, section 7

25 The commencement date of the LRA, i.e. 2 May 2012

26 Land Registration Act No. 3 of 2012, section 91(8) Available at <http://www.kenyalaw.org>

In the case of joint tenants, title to land can be **acquired** through **transmission**.

Upon the death of a joint **proprietor**, the **interest** of the **deceased** tenant shall **vest** in the surviving tenant(s) jointly. Section 60 of the LRA mandates the **Registrar**, upon proof of the death, to delete the name of the **deceased** tenant from the register by registering the death certificate.

Transmission on Death of Sole Proprietor or Proprietor in Common – Section 61 of the LRA

Land, a lease or a **charge** can be owned in common. Under such ownership, each **proprietor** is entitled to an undivided share in the land, lease or **charge**.

When a sole **proprietor** or a **proprietor** in common dies, his/her share is treated as part of his **estate** and title will revert to the **personal representative** as **proprietor** in that **capacity**. The **Registrar** is required to indicate in the register against his/her name, that the **personal representative** is so registered, either as **Executor** of the **Will** or as **administrator** of the **estate** of the **deceased**.

Once the **grant** has been confirmed, the **Registrar** may register by **transmission** any **transfer** of land by the **personal representative** or any surrender of a lease or discharge of a **charge** by the **personal representative**.

Transmission on Bankruptcy ²⁷

A person can **acquire** an **interest** in land, a lease or a **charge** through an order of Court adjudging bankrupt, a **proprietor** of

such land, a lease or a **charge**. Once a certified copy of the Court order, or an order to the **effect** that the **estate** of a **deceased** person be administered according to the law on bankruptcy, is filed with the **Registrar**, such a person will be registered as the **trustee** in bankruptcy of the land, lease or **charge**.

A **trustee** in bankruptcy will be described in the register as ‘trustee of the property of [...] a bankrupt’.

Transmission in Other Cases – Section 65 of the LRA

A person can **acquire** an **interest** in land, a lease or **charge** by virtue of an order of the Court or by certificate of sale made or issued under the law. On application to the **Registrar** and supported by the instrument of **transfer**, the applicant shall be registered as the **proprietor**.

Long-term Leases Exceeding 21 Years Created Out of Private Land – Section 56 of the Land Act

Interests in private land may also be **acquired** or may be **alienated** through long-term leases exceeding 21 years. Under section 56 of the Land Act, the owner of private land can lease that land or part of it to any person for:

- a) A specified period, or
- b) The lifetime of either the **lessor** or the **lessee**, or
- c) An indefinite period to be terminated by either party to the lease.

Words you need to know

acquire(d) to get or to obtain; got or obtained

adjudication the process of ascertaining claims of rights over land in trust land areas for purposes of registration

administrator of the estate a person to whom a grant of letters of administration has been made under the Law of Succession Act

adverse possession the acquisition of property rights through open, peaceful, continuous and uninterrupted occupation of the land with the knowledge of and without any opposition from the owner for a period prescribed by law

agricultural land land used for agricultural purposes which is not within a municipality, a township or a market

alienated sold or disposed of

capacity competence, ability or power

charge financial claim against a property

claimant person claiming to have a right

consideration payment in cash or by some other means

Commission the National Land Commission

ameliorate to improve or upgrade

effect consequence

empowers authorises

estate all the money and property owned by a person at the time of death

Executor person appointed by the Testator to execute a Will

deceased dead

interest a right or claim that a person has in land

grant in this section means grant of letters of administration, grant of probate of the Will or grant of summary administration of the estate of the deceased proprietor

lessor a person by whom a lease is granted

lessee a person to whom a lease is granted

personal representative Executor or administrator of a deceased person

prescribed set or approved

proprietor owner

purported claimed or implied

Registrar the Chief Land Registrar, County Land Registrars and any other persons appointed as such by the Public Service Commission

registrable capable of being registered

reserve set aside

reservation of public land setting aside of land

spouse husband or wife

squatters unlawful tenants or occupants of a piece of land

tenure occupancy or possession

terminated ended

transfer 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. In addition, a transfer is the instrument by which such passing is effected

transferee a person who receives land, a lease or charge passed through a transfer

transmission the passing of land, a lease or a charge from one person to another by operation of law on death, bankruptcy or otherwise

trustee includes a personal representative

vest transfer

void invalid

Land Ownership and Access Under the Land (Group Representatives) Act – Chapter 287²⁸

- *Article 63 of the Constitution*
- *Land (Group Representatives) Act – Chapter 287*

The above Act applies to land ownership in the **arid** and **semi-arid** areas of Kenya. In these areas, land **vests** and is held by communities or groups identified on the basis of **ethnicity, culture** or similar community **interests** like pastoralists.

Registration of Land – Second Schedule of the Land (Group Representatives) Act

Under the above Act,

- a) After the process of **adjudication**, all persons recorded in the **adjudication** register as having an **interest** in the group land are entitled to become members of the group;
- b) Each group elects not more than ten and not less than three group representatives who get registered and hold land for the benefit of the whole group;
- c) The group representatives hold land as such and exercise powers over the land in consultation with the group members;
- d) Members own land in undivided shares. They live on the land free of **charge** with their families and are entitled to use the land and its natural resources.

²⁸ Chapter 287 of the Laws of Kenya, Available at <http://www.kenyalaw.org>

Charging and Other Dispositions of Group Land

The process for the above is as follows:

- a) The group representatives cannot dispose of group land except with the **consent** of the whole group, representatives and the **Registrar** of group representatives (**Registrar**);
- b) With the **consent** of the **Registrar**, the representatives and the entire group, the representatives may **charge** the land for a loan for development purposes.

Words you need to know

adjudication the process of ascertaining claims of rights over land in trust land areas for purposes of registration

arid land dry, barren, infertile land

charge financial claim against a property

consent approval or permission

culture way of life

ethnicity traditional way of life

interest a right in or over land

Registrar the Chief Land Registrar, County Land Registrars and any other persons appointed as such by the Public Service Commission

semi-arid land area has little rain but is not completely dry

REGISTRABLE INSTRUMENTS

- *Lease Instrument*
- *Charge Instrument*
- *Transfer Instrument*
- *Cautions – Section 71 of the LRA*
- *Inhibitions – Section 68 of the LRA*
- *Restrictions – Section 76 of the LRA*

Interest Conferred by Registration – Section 24 of the LRA

Under Section 24 of the LRA, registration of a person as **proprietor** of land **vests** in that person **absolute rights** of ownership. Similarly, the registration of a person as the **proprietor** of a lease **vests** in that person the leasehold **interest** described in the lease together with all implied and expressed rights and privileges belonging thereto.

Section 25 of the LRA provides that the rights of a **proprietor**, whether **acquired on first registration** or subsequently for valuable **consideration**, shall not be liable to be **defeated** and are free from all other **interests** and claims. However, the **proprietor's** title is subject to:

- a) The leases, **charges** and other **encumbrances**, conditions and **restrictions** (if any) noted in the register;
- b) **Spousal interests** over **matrimonial property** as will be discussed in Chapter 3;
- c) His/her **obligations** as a **Trustee** including customary trusts and the other **overriding interests** shown in section 28 of the LRA.

Words you need to know

absolute rights unqualified or unlimited rights

acquired got or obtained

adjudication the process of ascertaining rights over land for purposes of registration

charges financial claims against a property

consideration payment in cash or by some other means

defeated challenged

encumbrances impediments

first registration registration of title immediately after land adjudication process

interest a right or entitlement in or over land

matrimonial property property acquired during marriage

obligation duty or responsibility

overriding interests rights subject to which a registered proprietor holds title to land

proprietor owner

restrictions limitations

spousal interests the rights of a spouse in or over land

trustee includes a personal representative

vests transfers

Rectification of the Register – Section 80 of the LRA

The Court can order **rectification** of the register by directing that any registration be cancelled or **amended** if satisfied that the registration was obtained, made or omitted by fraud or mistake. However, the register shall not be rectified to affect the title of a person who is in possession, having **acquired** the land, lease or **charge** for valuable **consideration**, unless s/he:

- a) Had prior knowledge of the omission, fraud or mistake;
- b) Caused such omission, fraud or mistake;
- c) **Substantially** contributed to the omission, fraud or mistake by any act, neglect or default.

According to section 81 of the LRA, any person who suffers damage as a result of **rectification** of the register is entitled to **indemnity**. However, no **indemnity** is payable to any person who caused or **substantially** contributed to the damage by fraud or negligence.

Certificate of Title to be Conclusive Evidence of Proprietorship – Section 26 of the LRA

Under section 26 of the LRA, a certificate issued upon a purchase and **transfer** of land or upon a **transmission** by the **proprietor** is

conclusive evidence of **absolute** ownership of the land described in the said certificate. This is subject to any conditions that may be endorsed on the certificate. If the certificate was **acquired** corruptly or through fraud to which the **proprietor** was a party, such ownership can be challenged in a Court of law.

Compulsory Acquisition²⁹

The **absolute** rights of a **proprietor** over a title to land are subject to **compulsory acquisition** by the government upon payment of **compensation**³⁰ if the land is required for public purposes or in the public interest.

After the land has been compulsorily **acquired**, if the public purpose or interest justifying the acquisition ceases or fails, the **Commission** may offer the original owner(s) or their successor(s) in title **pre-emptive rights** to reacquire the land, subject to the full amount of **compensation** being refunded.

Words you need to know

absolute unqualified or unlimited

acquired got or obtained

amended altered, modified or revised

compensation damages, reparation

²⁹ The Land Act, 2012, Act No. 6 of 2012, section 110

³⁰ Section 29, section 111 of the Land Act and Constitution of Kenya, 2010, Article 40(3)(b)

compulsory acquisition the power of the state to deprive or acquire any title or other interest in land for a public purpose subject to payment of compensation

Commission the National Land Commission

consideration payment in cash or by some other means

first registration registration of title immediately after land adjudication process

indemnity compensation

interest a right in or over land

pre-emptive rights rights afforded to persons with an interest in land before they are offered to the general public

proprietor owner

rectification alteration, amendment

substantially to a large extent

transfer 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. In addition, a transfer is the instrument by which such passing is effected

transmission the passing of land, a lease or a charge from one person to another by operation of law on death, bankruptcy or otherwise

Capacity to Register

- a) Article 40 of the Constitution of Kenya 2010
- b) Section 47 (1) of the Land Registration Act (LRA)
- c) Section 27 of the Land Act

All Kenyans, without discrimination as to sex, are entitled to own land and any property of any description anywhere in Kenya. Section 27 of the Land Act **empowers** a **child** to hold title to land through a **trustee**.

Section 47(1) of the LRA provides that the name of a person under the age of 18 years may be entered in the Register to enable the **interest** of the **minor** to be held in trust. Such land shall be registered in the name of the **guardian** as **trustee** either on **first registration**, as a **transferee** or on **transmission**. Such registration does not permit a **minor** to deal with land or any **interest** in the land. When the **interest** of any **child** has been so registered, the **Registrar** is required to enter a **restriction** immediately.

Land Holding by Non-Citizens

At independence, the post-colonial government issued many leases to non-citizens who were mainly former white settlers. Most of these leases were for a period of 999 years. Article 65 of the current Constitution has drastically changed the leasehold **tenure** of non-citizens. A person who is not a citizen of Kenya may now hold land only on the basis of leasehold **tenure**. Such a lease shall not exceed 99 years.

Any current lease, in favour of a non-citizen which **purports** to

confer an **interest** in land greater than a 99 year lease is, by virtue of Article 65, **construed** as **conferring** upon that person, a 99 year leasehold **interest** and no more.

Words you need to know

child an individual who has not attained the age of 18 years

construe to interpret or to be understood to mean

confer bestow, give, award

empowers authorises

guardian a custodian

interest right or entitlement

minor an individual who has not attained the age of 18 years

purports claims, implies

Registrar the Chief Land Registrar, County Land Registrars and any other persons appointed as such by the Public Service Commission

restrictions limitations

tenure occupancy or possession

transferee a person who receives land, a lease or a charge through a transfer

transmission the passing of land, a lease or a charge from one person to another by operation of law on death, insolvency or otherwise

trustee includes a personal representative

1(c): Land Alienation

Contracts over Land

A **proprietor** of land may **alienate** his/her right to the land by way of sale, lease, **charge**, **partition** or **transfer**.

All **contracts** for sale or for **disposition** of an **interest** in land must be in writing and signed by all the parties thereto. The requirement for each signature to be **attested** by a witness who was present when the **contract** was signed by such party is a **mandatory**³¹ requirement. If the **contract** relates to a legal mortgage, such **consent** is **mandatory**.

However, this requirement does not apply if a **contract** is made in the course of a public auction.

Breach of Contract by Purchaser – Section 38 of the Land Act

If the purchaser has taken possession of the land pursuant to a **contract** of sale but is in **breach** of the **contract**, section 38 of the Land Act **empowers** the **vendor** to **rescind** the **contract** by resuming possession peaceably or by obtaining an order from the Court in accordance with the provisions of section 41 of the Land Act.

31 Section 38(1) of the Land Act No. 6 of 2012

Words you need to know

alienate to sell or dispose of

attested evidenced

breach violate or contravene

charge financial claim against a property

consent approval or permission

contract agreement

disposition any sale, charge, transfer, grant, partition, exchange, lease, surrender and includes a usufructuary rights in land or a lease and any other act by the owner of a land or under a lease where the owner's rights over that land or lease are affected

empower authorise

interest an entitlement

mandatory compulsory

partition subdivide

proprietor land owner, property owner

rescind annul or cancel

transfer 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. In addition, a transfer is the instrument by which such passing is effected

vendor person selling land

Procedure for Obtaining Order for Possession³²

A **vendor** seeking to **rescind** a **contract** of sale and regain possession is required by section 41 of the Land Act, to serve a notice on the purchaser informing him/her:

- a) The nature and extent of the **breach** complained of by the **vendor**;
- b) If the **vendor** considers that the **breach** is capable of being remedied by payment of a stated amount of money;
- c) Whether the **vendor** considers that the **breach** can be remedied by the purchaser doing or **desisting** from doing anything or paying reasonable **compensation** or both, all of which should be done within a period of thirty days from the date of the notice;
- d) The period within which the purchaser should remedy the **breach** if such **breach** is capable of being remedied;
- e) The consequence should the **vendor** fail to remedy the **breach**;

³² The Land Act No. 6 of 2012, section 41

- f) If the **vendor** considers that the **breach** is not capable of being remedied, the **vendor** may seek a Court order to repossess the land.

Words you need to know

breach violate or contravene

compensation damages or reparation

contract agreement

desisting abstaining from, discontinuing

rescind annul or cancel

vendor person selling land

Relief Against Vendor's Decision to Rescind Contract of Sale of Land³³

A purchaser can seek relief against a vendor's decision to rescind a contract of sale of land:

- a) After the **vendor** serves the purchaser with a notice and proceeds to apply to the Court for an order of possession of the land; or
- b) If the **vendor** has peaceably entered in the land to take possession the purchaser may apply to the Court for relief against the **rescission of contract**. The purchase can institute

separate proceedings or make an application within the proceedings by the **vendor** for an order of possession.

Alienation in Cases of Joint Ownership – Section 91 (4) of the LRA

If the land is occupied jointly, **dispositions** can be only by all the joint **proprietors**. Each joint tenant can **transfer** their **interest** to all the other tenants and to nobody else.

Alienation by Tenants in Common – Section 91 (5) and 91 (6)

Except with the written **consent** of the other tenant(s) in common, no tenant in common can deal with their undivided share in favour of another person other than another tenant in common.

Partition by Tenant in Common – Section 94 of the LRA

Partition can only be made:

- a) With the **consent** of all the tenants in common occupation of land;
- b) Subject to any other written law that requires **consent** to subdivision of such land;
- c) In accordance with the agreement of the tenants in common.

33 The Land Act No. 6 of 2012, section 42

Alienation by Way of a Charge – Section 80 of the Land Act

Under section 80, every **charge** instrument has **effect** as security while the **chargee** has all the powers and remedies in case of default by the **chargor**. These include the remedy to exercise the statutory power of sale when there is default in payment.

A **charge** instrument shall contain the terms and conditions of sale, an explanation of the consequences of default and the reliefs that the **chargor** is entitled to, including the right of sale.

Informal Charges – Section 79(6) of the Land Act

The owner of private land or a **lessee** can by an instrument in the **prescribed** form charge his/her **interest** in the land or lease to the bank or any financial institution as security for the repayment of an existing or future debt.³⁴

Charge Over Matrimonial Home – Section 79(3) of the Land Act

If the property to be charged is the matrimonial home, the **charge** shall be **valid** only if:

- a) The document or form used to apply for the **charge** or to **grant** the **charge** is **executed** by the **chargor** and any **spouse** of the **chargor** living in that matrimonial home, or
- b) There is evidence from the document that it has been assented to by all parties.

Creating an Informal Charge – Section 79 (6) of the Land Act

An informal **charge** can be created where:

- a) A **chargee** accepts a written and witnessed undertaking from a **chargor** stating the intention to charge his/her land or **interest** in land to secure credit from the **chargee**, and
- b) The **chargor** deposits with the **chargee** either the certificate of title to the land, a document of lease of land or any other document which proves ownership of land or **interest** in the land.

An informal **charge** is **valid** whether or not it has been registered.

Remedy of Chargee Under Informal Charge

In case of default in making repayments, section 79(7) and (9) of the Land Act provide that a **chargee** cannot take possession of or sell land whose title document has been deposited by the **chargor** under an informal lease, without an order of the Court.

Formal Charge – Section 79(5) of the Land Act

This is a **charge** whose registration is a **mandatory** legal requirement. Since it can take effect only when it is registered in the **prescribed** register, a **chargee** cannot be entitled to exercise any of the remedies under that **charge** unless it is registered.

34 The Land Act No. 6 of 2012, section 79(1)

Words you need to know

charge financial claim against a property

chargee the bank or financial institution to whom a charge has been given as security for the repayment of an advance of money or money's worth, or to secure a condition

chargor the person borrowing money from the bank/finance institution on the strength of a charge instrument

consent approval or permission

contract agreement

disposition any sale, charge, transfer, grant, partition, exchange, lease, surrender and includes a usufructuary rights in land or a lease and any other act by the owner of a land or under a lease where the owner's rights over that land or lease are affected

effect consequence

executed carried out or implemented

grant allow

interest right or entitlement

lessee a person to whom a lease is granted

mandatory compulsory

proprietor owner

prescribed set or approved

rescission cancellation or withdrawal

spouse wife or husband

transfer 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. In addition, a transfer is the instrument by which such passing is effected

valid legal/legally binding

vendor person selling land

Forfeiture of Lease ³⁵

A lease **interest** in public land will be **forfeited** if the **lessee** defaults in payment of rent for a period of 12 months after such rent became due or if the **lessee** is in **breach** of terms or conditions of the lease. Where such default has occurred, **the Commission** is **empowered** by section 31 of the Land Act, to commence Court proceedings to recover the land subject of the lease. If the case is proved, the Court shall declare the lease **forfeited** and the **Commission** will be at liberty to re-enter the land.

35 The Land Act No. 6 of 2012, section 31

Forfeiture of License

The **Commission** is empowered by section 32 of the Land Act to apply to the Court to declare a **license forfeited** if:

- a) The **licensee** fails to pay rent for a period of 30 days after it becomes due, or
- b) The **licensee** fails to comply with or **breaches** any condition in the **license**.

According to section 35 of the Land Act, such **forfeiture** does not **extinguish** the debt owed to the Commission, neither does acceptance by the **Commission** of payment of such rent operate as waiver of the **Commission's** right to seek a declaration of **forfeiture**.

Co-ownership Between Spouses

A **spouse** who holds land or a dwelling house in his/her name individually can undertake a **disposition** of the land or dwelling house. However, if that **disposition** is a **charge, consent** to such **disposition** by the other **spouse(s)** is a **mandatory** requirement in accordance with section 93(3) of the LRA.

The **lender** is duty bound to inquire from the borrower that the **spouse(s)** has **consented** to the **charge**.

If the **disposition** is an assignment or a **transfer**, the assignee or **transferee** is duty bound to inquire from the assignor or **transferor** whether the **spouse** or **spouses** have **consented** to the transaction.

If the **spouse** undertaking the **disposition** misleads the **lender**,

assignee or **transferee** by the answers to the **inquiry**, the **disposition** shall be **void** at the **option** of the **spouse** who has not **consented** to it under section 93(4) of the LRA.

Words you need to know

Commission the National Land Commission

consent / consented approval or permission / approval or permission given

breaches violates or contravenes

charge financial claim against a property

disposition any sale, charge, transfer, grant, partition, exchange, lease 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

empowered authorised

extinguish invalidate or cancel

forfeited surrendered or lost

forfeiture surrender

inquiry investigation, examination

interest right or entitlement

lender a person to whom a charge has been given as security for the repayment of an advance of money or money's worth or to secure a condition

lessee a person to whom a lease is granted

license permit, authorization or permission given by the National Land Commission in respect of public land or by the proprietor in respect of private or community land or a lease allowing the licensee to do some act in relation to the land subject matter of the lease which would otherwise be a trespass

licensee the person occupying land in accordance with the terms of a license

mandatory compulsory

option the freedom or right to choose

spouse wife or husband

transfer 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. In addition, a transfer is the instrument by which such passing is effected

transferee a person who receives land, a lease or charge through a transfer

transferor the person who passes land, a lease or charge through a transfer

void invalid

1(d): Transactions Affecting Agricultural Land

If a **disposition** agreement relates to **agricultural land** situated in a **land control area**, according to section 6 of the LCA³⁶ **consent** of the relevant Land Control Board must be sought and obtained, failing which the transaction shall be **null and void**. As was held in the case of **Leonard Njonjo Kariuki v Njoroge Kariuki alias Benson Njonjo**³⁷ such agreement cannot, in law, be enforced.

Application for Consent³⁸ – ***Section 8 of the LCA***

Applications for **consent** must be made within 6 months of the making of the agreement for the **controlled transaction**. This period can be extended by the Court on application.

Transactions that Require Consent of the Land Control Board – Section 6 of the LCA

- a) Sale, **transfer**, lease, mortgage, exchange, **partition** or other disposal of or any dealing in **agricultural land** which is situated within a **land control area**;
- b) The **division** of any such **agricultural land** into two or more parcels to be held under separate titles;
- c) The issue, sale, **transfer**, mortgage or any other disposal of or dealing with any share in a private company or cooperative society which for the time being owns **agricultural land** situated within a land control area.

36 Chapter 301 of the Laws of Kenya. Available at <http://www.kenyalaw.org>

37 Civil Appeal No. 26 of 1979. eKLR, Available at <http://www.kenyalaw.org>

38 The Land Control Act, Section 8

Words you need to know

agricultural land land used for agricultural purposes and which is not within a municipality, township or market

consent approval, permission

controlled transaction a transaction subject to administrative or quasi-judicial control

disposition any sale, charge, transfer, grant, partition, exchange, lease, surrender and includes a usufructuary rights in land or a lease and any other act by the owner of a land or under a lease where the owner's rights over that land or lease are affected

division separation or partition

enforced implemented

LCA abbreviation for Land Control Act, Chapter 302 of the Laws of Kenya

land control area an area where transactions affecting agricultural land must receive consent of the Land Control Board

null and void cancelled and invalid

partition subdivide

transfer 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. In addition, a transfer is the instrument by which such passing is effected

Grant or Refusal of Consent of The Board in Controlled Transactions

The Land Control Board decides land transactions on a purely economic and social basis. There is no legislation compelling the Board to consider the views of **spouses** or other family members before **granting** or refusing **consent** to any transaction, particularly where the land subject matter of the application is **matrimonial property**.

In deciding whether to **grant** or refuse **consent**, the Land Control Board shall:

- a) Consider the **effect** which the **grant** or refusal of **consent** is likely to have on the economic development of the land in question
- b) Consider the **effect** the **grant** or refusal of **consent** is likely to have on the maintenance or **improvement** of standards of good husbandry in the area within which the land is situated.

Consent will be refused if:

- a) The person to whom the land is to be disposed is unlikely to farm it well or develop it adequately
- b) The person is unlikely to be able to use the land profitably for the intended purpose
- c) The person already has sufficient land
- d) In the case of **division** of land into two or more parcels, the **division** is likely to reduce the productivity of the land.

Appeals/Void Transactions – Section 9(2) of the LCA

When **consent** is refused, an agreement to a **controlled transaction** becomes **void**:

- a) On the expiry of the time limited for appeal³⁹ under section 11
- b) Where an appeal is entered and dismissed on the expiry of the time limited for appeal⁴⁰ under section 13
- c) Where a further appeal is entered under section 13 and dismissed.

Recovery of Consideration – Section 7 of the LCA

Any money or other **consideration** paid in the course of a **controlled transaction** that becomes **void** is recoverable as a debt by the person who paid it from the person to whom it was paid.

Acts in Furtherance of Void Transactions – Section 22 of the LCA

It is a criminal offence for a person to:

- a) Pay or receive money; or
- b) Remain in possession of a piece of land in furtherance of a transaction that has become **void**.

39 Within 30 days of the copy of the Board's decision being delivered or posted to him/her
40 Within 30 days of the copy of the Board's decision being delivered or posted to him/her

Words you need to know

agricultural land land used for agricultural purposes and which is not within a municipality, township or market

consideration payment in cash or by some other means

consent approval or permission

controlled transaction a transaction which is subject to administrative or quasi-judicial involvement

division separation, partition

effect consequence

grant allow

improvement upgrade, enhancement or development

matrimonial property property acquired during marriage

null and void cancelled and invalid

purchaser buyer

spouse wife or husband

Instruments of Dispositions – Section 43 of the LRA

All instruments affecting the **disposition** of land must be in the form **prescribed** under the LRA or any other written law. An instrument affecting any **disposition** of private land shall be of no **effect** unless it is so registered in accordance with the relevant law relating to the registration of such an instrument. Consequently, all leases, **charges**, **transfers**, etc. must be registered and stamp duty paid in order to give them effect.

Section 37 of the LRA **empowers** a **proprietor** to **transfer** land, a lease or a **charge** to any person with or without **consideration** by **executing** an instrument in the **prescribed** form or in such form as the **Registrar** may in any particular case approve. Apart from **executing** the instrument, the **transferee** is required by section 44(5) of the LRA to file the instrument with the **Registrar** attaching the following documents:

- a) Copy of identity card or passport
- b) Copy of a Personal Identification Number Certificate
- c) Passport size photograph
- d) Marriage certificate, where applicable
- e) Any other document as the **Cabinet Secretary** may **prescribe**.

A **transfer** is completed by payment of the **prescribed** fee and registration of the **transferee** as **proprietor**.

Certificate of Payment of Rent – Section 38 of the LRA

If the land is situated within the area of a **rating authority**, the **Registrar** shall not register any instrument **purporting to transfer** or to **vest** any land or a lease of land unless there is a written statement from the relevant government agency confirming that all outstanding **rates** and any other **charges** payable to the agency in respect of the land have been paid. These include all **rates** and **charges** for the last 12 months up to the date when the application for **transfer** is made.

Certificate of Payment of Rent – Section 39 of the LRA

Similarly, the **Registrar** shall not register any instrument which **purports to transfer** or create an **interest** in land unless a certificate is produced with that instrument confirming that no rent is owing to the national or county government in respect of the land.

Some land transactions require the **consent** of the Land Control Board. An instrument to effect a land transaction which requires such **consent** shall not be registered unless the **Registrar** is satisfied that the necessary **consent** has been obtained.

Words you need to know

rating authority an authority to whom taxes are payable

Cabinet Secretary the Cabinet Secretary responsible for matters relating to land

charge financial claim against a property

consent approval or permission

consideration payment in cash or by some other means

disposition means any sale, charge, transfer, grant, partition, exchange, lease, surrender and includes a usufructuary rights in land or a lease and any other act by the owner of a land or under a lease where the owner's rights over that land or lease are affected

effect consequence

empowers authorises

executing carrying out, implementing

interest right or entitlement

prescribed set or approved

proprietor owner

purports/purporting claim, implies; claiming, implying

rates duty or taxes

Registrar the Chief Land Registrar, County Land Registrars and Land Registrars appointed under sections 12 and 13 of the LRA

transfer 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. In addition, a transfer is the instrument by which such passing is effected

transferee a person who receives land, a lease or charge passed by an act of transfer

vest transfer



*Section 2:
Family Law*



Section 2: Family Law

Domestic Legal Provisions Related to Family Law

Land Act No.6 of 2012

Land Registration Act No.3 of 2012

Law of Succession Act Revised 2010 (1981)

In matters of succession and inheritance by women of land and other property questions would normally arise as to whether the **Claimant** was the wife of the **deceased** so as to entitle her to inherit his property. In order to prevent a woman from inheriting her husband's land and other property, her in-laws would claim the absence of a legally recognised marriage between her and the **deceased**. Payment of dowry or bride price is common requirement for a **valid** customary law marriage in all of the tribes of Kenya.

2 (a): Matrimonial Property

Joint Tenancy/Ownership⁴¹ – Section 91 (8) of the LRA

Except with leave of the Court, the only joint tenancy/ownership recognised in law is between spouses. Any joint tenancy/ownership, other than that between spouses, purported to have been created without leave of the Court takes effect as a tenancy in common.

⁴¹ With effect from 2nd May, 2012, when the LRA became operational

Co-ownership between spouses – Section 93 of the LRA

Land obtained by one **spouse** for the co-ownership and use of both or all **spouses** is presumed to be held by the **spouses** as joint tenants and the **Registrar** is under **obligation** to register the **spouses** as such unless:

- a) The certificate of ownership clearly states that one spouse is registered as the only **proprietor**;
- b) The certificate states that the **spouses** are taking the land as joint tenants.
- c) The presumption is **rebutted** in the manner shown in (a) and (b) above.

Land Registered in Name of One Spouse – Section 93(2) of the LRA

When land is registered in the name of one **spouse**, the other **spouse(s)** can **acquire** an **interest** in the said land in the nature of ownership in common. Such rights are **acquired** when a **spouse** or **spouses**, by their labour or other means, contribute to the productivity, **upkeep** and **improvement** of the land. The rights gained by a **spouse** by way of contribution, are recognised as if they were registered.

Matrimonial Property

Upon dissolution of marriage, and in the absence of legislation to regulate **matrimonial property**, the Courts in Kenya have applied section 17 of the 1882 Married Women's Property Act of England

(MWPA) in disputes involving the sharing of property **acquired** during marriage. Section 17 of the MWPA reads as follows:

In any question between husband and wife as to the title to or possession of property [...] either party may apply by summons or otherwise in a summary way to any Judge of the High Court of Justice [...] and the Judge of the High Court may make such orders with respect to the property in dispute, and to the costs of and consequent on the application as he thinks fit.

In **Fathiya Essa v Mohamed Alibhai Essa**⁴² where the parties **professed** the **Muslim** faith, the Court of Appeal for the first time held that the 1882 MWPA of England applies to **Muslims** as it does to other Kenyans.

Contribution by Spouse to Acquisition of Property

The Kenyan Courts have made landmark decisions in determining the property rights of women particularly landed property **acquired** during marriage. In **Kivuitu v Kivuitu**⁴³ and in subsequent decisions, the Courts have continued to take into account a wife's **direct and indirect contribution** to the acquisition of property to **determine** the wife's entitlement to such property.

Such contribution may be financial (direct) or by way of labour or services rendered on the domestic front (indirect), as was expressed by Kwach JA in **Nderitu v Nderitu**⁴⁴ where he considered childbearing which increased the size of the family, as a contribution by the wife.

42 Civil Appeal No. 101 of 1995. Citation (1995) LLR 384 (CAK) Available at <http://www.kenyalaw.org>

43 Civil Appeal No. 26 of 1985, Available at <http://www.kenyalaw.org>

44 Civil Appeal No. 203 of 1997, Available at <http://www.kenyalaw.org>

Words you need to know

acquire /acquired to obtain or to get / got or obtained

Claimant person claiming to have a right

determine decide or conclude

direct contribution financial input or financial payment

improvement upgrading, development or enhancement

indirect contribution input by taking up services and responsibilities in the family, providing labour

interest right or entitlement

obligation duty or responsibility

matrimonial property property acquired during marriage

Muslim any person who professes the religion of Islam

profess own, confess or acknowledge

proprietor owner

purported claimed or implied

rebutted refuted or showed to be false

Registrar the Chief Land Registrar, County Land Registrars and any other persons appointed as such by the Public Service Commission

spouse wife or husband

upkeep maintenance, preservation or conservation

valid legal/legally binding

2 (b): Property Rights Under The Law of Succession Act⁴⁵

Enacted in 1972, the Law of Succession Act (the LSA), became operational in 1981. The Act provides for both testamentary and **intestate** succession and applies to all Kenyans, except those who **profess** the Islamic faith. Male and female **children** have the same inheritance rights under the LSA.

Those who profess the Muslim Faith – Section 4 of the LSA

The LSA does not apply to testamentary or **intestate** succession of the **estate** of any person who at the time of death was a **Muslim**. The devolution of the **estate** of any **Muslim** will be governed by **Muslim law**.

However, the provisions of Part VII of the LSA relating to the administration of **estates**, in so far as they are not **inconsistent** with **Muslim law**, shall apply to the **estate** of any **Muslim** who dies before, on or after 1 January 1991.

Words you need to know

children in this section means both minor and adult sons and daughters of a deceased person and includes an unborn child, as long as that child is eventually born alive. It includes adopted children

estate all the money and property owned by a person at the time of death

inconsistent not in agreement or contradictory

intestate dying without making a Will

Muslim any person who professes the religion of Islam

Muslim law the law applicable to a Muslim person at the time of his/her death

profess own, confess or acknowledge

Testate Succession

Capacity to Make Wills – Section 5 of the LSA⁴⁶

Any person of sound mind who is not a **minor** has the **capacity** to make a **Will**. A female person, whether married or unmarried has the same **capacity** to make a **Will** as does a male person.

Invalid Wills

A **Will** made through fraud, coercion or mistake is **void**.

A **Will** whether oral or written is **void** if at the time of making the **Will** the **Testator**, due to illness or drunkenness, was in such a state of mind that she/he could not know what she/he was doing.

The case of **Julius Wainaina Mwathi v Beth Mbere Mwathi & Another**⁴⁷ demonstrates this position.

45 Chapter 160 of the Laws of Kenya.

46 Chapter 160 of the Laws of Kenya, Available at <http://www.kenyalaw.org>

47 Civil Appeal No. 123 of 1992, Available at <http://www.kenyalaw.org>

Oral Wills – Section 5 of the LSA

A **Will** can be oral or in writing but a written **Will** cannot be **revoked** by an oral **Will**. An oral **Will** is **valid** only if:

- a) It is made before two or more competent persons; and
- b) The **Testator** dies within three months from the date of making the oral **Will**. If the oral **Will** is made by a member of the armed forces during a period of active service, the **Will** shall be **valid** if she/he dies during the same period of active service, notwithstanding the fact that she/he died more than three months from the date of the oral **Will**.

If there is conflict in the evidence of witnesses as to what was said by the **deceased** in making the oral **Will**, unless the contents of the oral **Will** are proved by an **independent witness**, the oral **Will** shall be **invalid**.

Written Wills – Section 11 of the LSA

A written **Will** shall be **valid** only if:

- a) The **Testator** has signed it or affixed his **mark** on it;
- b) It has been signed by some other person on behalf of the **Testator** in the presence of and by the direction of the **Testator**;
- c) The signature of the **Testator** or such other person has been **attested** by at least two **competent witnesses** who must have seen the **Testator** or the other person sign or affix their thumb print on the **Will**;

- d) The signature or the **mark** of the **Testator**, or the signature or **mark** of the person signing for him/her, is so placed that it appears to have been intended to give effect to the **Will**;
- e) Each of the witnesses sign the **Will** in the presence of the **Testator**.

A person can, in the **Will**, appoint an **Executor** or **Executors** of the **Will**. According to section 14 of the LSA, the **Executor of a Will** is a **competent witness** to prove the validity or invalidity of a **Will**.

Words you need to know

attested evidenced

capacity competence, ability or power

competent witness a person of sound mind who has attained the age of 18 years

deceased dead person

effect consequence

Executor of a Will a person appointed by the Testator to implement the Will

independent witness a witness who is not a beneficiary under a Will or the spouse of any such beneficiary

invalid not legally binding, not legally recognised

mark thumb print

minor an individual who is below the age of 18 years

revoked cancelled

Testator the person making a Will

valid legally binding

void invalid

Will a legal declaration by a person of his/her wishes regarding the disposition of his/her property after his/her death

Revocation, Alteration and Revival of Wills – Section 17 of the LSA⁴⁸

A **Will** may be **revoked** or altered by the maker at any time when he/she is competent to dispose of his/her free property by **Will**.

Revocation of Will

a) A written **Will** cannot be **revoked** by an oral **Will** – Section 18 of the LSA

b) A **Will** or **codicil** can only be **revoked** by another **Will** or **codicil**

48 LSA – abbreviation for Law of Succession Act, Chapter 160 of the Laws of Kenya

Revocation of Will by Testator’s Marriage – Section 19 of the LSA

- a) A **Will** shall be **revoked** by the marriage of the maker of the **Will**.
- b) Where the **Will** is expressed to be made in contemplation of marriage to a specified person, it shall not be **revoked** by the marriage to that person.

Effect of Obliteration or Alterations in a Will – Section 20 of the LSA

- a) **Obliteration** and **alterations** made in a **Will** after **execution** have no **effect**, unless
- b) They are countersigned by the **Testator** and his/her signature duly witnessed by a person who saw the **Testator** signing against the **alterations** or **obliteration**.

Revival of Wills – Section 21 of the LSA

- a) A **Will** that was wholly **revoked** can only be revived by **re-execution**
- b) If only part of the **Will** was **revoked**, that part can only be revived through **re-execution** or by a **subsequent Will** or **codicil** showing an intention to revive it.

Words you need to know

alteration variation or amendment

codicil a document that explains, modifies or revokes a Will or part of a Will

effect consequence

execution implementation or carrying out

obliteration destruction, elimination

re-execution implement again or carry out again, effect again

revocation cancellation

revival restoration

revoked cancelled, rescinded or withdrawn

subsequent Will successive or consequent Will

Testator is the person making a Will

Will a legal declaration by a person of his/her wishes regarding the disposition of his/her property after his/her death

Intestate Succession – Part V of the LSA

Where the Intestate is Survived by a Spouse and a Child or Children – Section 35 of the LSA

Where the **deceased** died without making a **Will**, the surviving **spouse** is entitled to:

- a) The **personal and household effects** of the **deceased absolutely**;
- b) A **life interest** in the whole residue of the **net intestate estate**.

If the surviving **spouse** is a widow, her **life interest** shall **terminate** upon re-marriage to another person. Upon the death of a surviving **spouse** or upon re-marriage of a widow, the **net intestate estate** shall devolve upon the surviving **child**, if there be only one, or **children** in equal shares.

Where the Intestate Deceased is Survived by One Spouse but No Child or Children – Section 36 of the LSA

The surviving **spouse** is entitled to:

- a) The **personal and household effects** of the **deceased absolutely**;
- b) The first KSh 10,000 out of the residue of the **net intestate** or 20 per cent, whichever is greater but the minister may by **Gazette** notice vary this amount;
- c) A **life interest** in the whole of the remainder, but if the surviving **spouse** is the widow her **life interest terminates** when she re-marries.

Power of a Spouse during a Life Interest – Section 37 of the LSA

A surviving spouse enjoying a life interest can during the period of the life interest, sell any of the property subject of the life interest if necessary for his/her own maintenance. This can only be done with the consent of co-trustees and all adult children.

In the case of immovable property, e.g. land, the exercise of this power is subject to approval of the Court.

Where the Intestate is Survived by a Child or Children but No Spouse – Section 38 of the LSA

If the intestate has left a surviving child or children but no spouse, the estate shall devolve upon the child, if there be only one, or upon the children in equal shares.

Where the Intestate has Left No Surviving Spouse, Child or Children – Section 39 of the LSA

The estate shall devolve to the kindred of the deceased in the following order of priority:

- a) Father of the deceased; or if dead
- b) Mother of the deceased; or if dead
- c) Brothers and sisters, and any child or children of the brothers and sisters, of the deceased person in equal shares; or if none
- d) Half-brothers and half-sisters, and any child or children of such half-brothers and half-sisters, in equal shares; or if none

e) The relatives who are in the nearest degree of lineage up to the sixth degree, in equal shares.

If the **intestate** was not survived by any of the people listed above, then the **intestate estate** shall devolve upon the **state** and be paid in to the **Consolidated Fund**.

Section 39 clearly discriminates against the mother of a person who is not survived by a **spouse, child or children** in so far as the father of the **deceased** is ranked in priority to the mother of the **deceased**.

Where an Intestate was Polygamous – Section 40 of the LSA

If the **intestate** has married more than once under any system of law that permits polygamy:

- a) His **personal and household effects** and the residue of the **net intestate estate** will in the first instance be divided among the houses according to the number of **children** in each house
- b) Each wife surviving him is treated as an additional unit to the number of **children** in that house
- c) The distribution of the **personal and household effects** and the residue of the **net intestate estate** within each house shall follow the rules set out in sections 35-38, as discussed above.

Child's Property to be Held in Trust – Section 40 of the LSA

Any property devolving upon a **child** or **children** shall be held in trust for them in equal shares in the case of more than one **child**.

Rules of Distribution on Intestacy in Scheduled Areas – Section 32 of the LSA

The rules of distribution on **intestacy** discussed above and contained in Part V of the LSA, do not apply to **agricultural land** and crops thereon or livestock in the various districts set out in the schedule appearing in that section.⁴⁹ According to section 33 of the LSA, the law applicable to distribution of this category of properties, on **intestacy**, is the customary law applicable to the tribe or community of the **deceased**.

However, such customary law will only apply if it is not **repugnant** to justice and morality and if it is not **inconsistent** with written law.⁵⁰

49 West Pokot, Turkana, Samburu, Mrsabit, Isiolo, Mandera, Wajir, Garisssa, Tana River, Lamu, Kajiado and Narok

50 The Judicature Act, section 3(1)

Words you need to know

absolutely completely or entirely

agricultural land land used for agricultural purposes which is not within a municipality or a township

child/children both minor and adult sons and daughters, includes unborn children subsequently born alive and adopted children

consent approval or permission

deceased dead

estate all the money and property owned by a person at the time of death

Gazette the Kenya Gazette or County Gazette

inconsistent not in agreement or contradictory

interest right or entitlement

intestacy the state of absence of a Will

intestate dying without making a Will

intestate estate the estate of a dead person in respect of which she/he has died without making a Will

kindred relatives

life interest right/entitlement that lasts for life

net intestate estate the estate of a dead person in respect of which she/he has died without making a Will after payment of all expenses and liabilities

personal and household effects clothing and articles of personal use, furniture, appliances, pictures, ornaments, food drink, utensils and all other articles of household use to be associated with a matrimonial home

repugnant goes against

spouse wife or husband

state government

terminates ends

Provision for Dependents – Part III, Sections 26 – 29 of the LSA

For purposes of Part III of the Act and according to section 29, a dependent means:

- a) The wife or wives, or former wife or wives, and the **children** of the **deceased** whether or not maintained by the **deceased** immediately prior to his death;
- b) The **deceased**'s parents, step-parents, grandparents, grandchildren, step-children, **children** whom the **deceased** had taken into his family as his own, brothers and sisters and

half-brothers and half-sisters as were being maintained by the **deceased** immediately prior to his death;

- c) Where the **deceased** was a woman, her husband, if he was being maintained by her immediately prior to the date of her death.

Any person claiming not to have been adequately provided for by **Will** or **intestacy** can apply to the Court under section 26 of the LSA for reasonable provision to be made in his/her favour. Such application should be made before confirmation of **grant** of representation.

In making provision for the dependent, the Court has the discretion to:

- a) Order a specific share of the **estate** be given to the dependent;
or
b) Make provision by way of lump sum or **periodical payments**.

Circumstances to be Taken in To Account by the Court

The Court will consider:

- a) The nature and amount of the **deceased's** property;
b) Any past, present or future capital or income from any source of the dependent;
c) The current and future needs of the dependent;
d) Whether the **deceased** had made any advancement or gift to the dependent during his life time;

- e) The conduct of the dependent in relation to the **deceased**;
.....
- f) The situation and circumstances of the **deceased**'s other
dependents and **beneficiaries** under any **Will**;
.....
- g) The **Testator**'s reasons for not making provision for the
dependent

The case of **Irene Macharia v Margaret Wairimu Njomo & another**⁵¹ demonstrates the circumstances which the Court would normally take into account when determining the entitlement of each dependent.

51 (2008) 1 KLR (G&F) 754, 1996 eKLR Available at <http://www.kenyalaw.org>

2 (c): Jurisdiction of Court – Section 47 of the LSA

In any place where both the High Court and Resident Magistrate's Court are available, the High Court has exclusive **jurisdiction** to make all **grants** of representation and **determine** all disputes under the LSA.

In areas where the High Court is not available, the High Court may be represented by a Resident Magistrate appointed by the Chief Justice and duly **Gazetted** for that purpose.

Words you need to know

beneficiaries all those who are entitled to inherit the estate of a deceased person

child/children sons or daughters; can be over or under 18 years of age

deceased dead person

determine decide or conclude

estate all the money and property owned by a person at the time of death

Gazetted published in the Kenya Gazette or the County Gazette

grant official act giving powers

intestacy the state of absence of a Will

jurisdiction authority to administer justice; hear and determine a case

periodical payments payments made on a weekly, monthly or yearly basis

Lack of Jurisdiction

1. Section 48 of the Law of Succession Act (LSA)
2. Section 76 of the Law of Succession Act (LSA)

A Resident Magistrate does not have **jurisdiction** to:

- a) To **determine** disputes or issue **grants** in all cases where the value of the **estate** of a **deceased** person exceeds KSh 100,000;
or
- b) Revoke such grant once a grant is issued.

No Grant to Certain Persons – Section 56 of the LSA

A **grant** of representation cannot be issued to:

- 1) More than four persons in respect of the same property;
- 2) Any person who is a **minor** or who is of unsound mind;
- 3) Any person who has been declared bankrupt.

Grant of Letters of Administration Section 56 - 58 of the LSA

No **grant of letters of administration** can be issued:

- a) With or without the **Will** annexed, to a body corporate other than the public **trustee** or a trust corporation;
- b) In the case of an **intestate estate**, to one person unless that person is the public **trustee** or a trust corporation;
- c) With **Will** annexed, to one person except if that person is the public **trustee** or if the **Testator** appointed one or more **trustees** in the **Will**.

Preference Given in Cases of Intestacy – Section 66 of the LSA

In determining to whom a **grant of letters of administration** should be issued where a **deceased** died **intestate**, the Court will normally be guided by the following order of priority:

- a) Surviving **spouse** with or without other **beneficiaries**;
- b) Other **beneficiaries** in the order of priority as set out in Part V of the Act;⁵²
- c) The public **trustee** and creditors.

52 Section 39 of the LSA

2 (d) Procedure for Obtaining Grants – Section 67 of the LSA

The procedure for obtaining a grant of letters is as follows:

- a) Filing of **Petition for grant**;
- b) Then a notice of application issued and published. The notice invites those with objections to notify the Court within a period of 30 days from the date of publication of the notice;
- c) Section 68 requires that objections be lodged in the **prescribed** form within the period specified in the notice;
- d) Then if an objection has been lodged, the Court must give notice to the objector to file an answer to the application and a cross application, within the period specified in the notice;
- e) If no answer or cross application are filed, section 69 requires the Court to proceed and make a **grant** on the original application;
- f) If answer and cross application are filed, the Court is mandated by section 69(2) of the LSA, to **determine** the dispute.

Confirmation of Grant – Section 71 of the LSA

After the **expiration** of six months from the date of the **grant**, or such shorter period as the Court may direct, the holder of a **grant** is required by section 71 to apply to the Court for confirmation of the **grant** for the purpose of distributing the assets of the **deceased**.

Application for confirmation can be made before the **expiration** of six months if:

- a) There are no dependents; or
- b) The only dependents are of **full age** and have **consented** to the application for confirmation.

Section 73 requires that within 1 year from the date of the **grant**, the Court shall give notice to the holder of a **grant** to apply for confirmation.

Confirmation in Cases of Continuing Trusts – Section 72(a) of the LSA

- a) Where there is a **continuing trust**, the Court shall confirm the **grant**, subject to appointment as **administrators** jointly with the surviving **administrator**, not less than one and not more than three persons as proposed by the surviving **administrator**.
- b) If the **continuing trust** arises after confirmation with only one surviving **administrator**, section 75A requires the surviving **administrator** to immediately apply to the Court to appoint as co-administrators not less than one and not more than three persons as proposed by the surviving **administrator**.

Failure to Make the Application – Section 75A(2) of the LSA

If within three months of there being a **continuing trust**, a sole surviving **administrator** fails to apply to the Court for appointment of additional **administrators**, the Court can appoint additional **administrators** on:

- a) The application of any interested party
- b) The application of a creditor or debtor of the **estate**
- c) Its **own motion**.

Confirmation in Cases of Intestacy – Section 71(2) (d) of the LSA

In cases of **intestacy**, confirmation of **grant** shall not be made until:

- a) The Court is satisfied as to the respective identities and shares of all **beneficiaries**
- b) The **grant** has specified all **beneficiaries** and their respective shares.

Words you need to know

administrator a person to whom a grant of letters of administration has been made under the LSA

beneficiaries all those who are entitled to inherit the estate of a deceased person

consented given approval or permission

continuing trust a trust that does not end upon the death of the grantor

deceased dead

determine decide or conclude

estate all the money and property owned by a person at the time of death

expiration conclusion or termination

full age having attained the age of 18

grant of letters of administration the act of formally giving document issued by a Court of probate appointing a person to manage the estate of the deceased who did not leave a Will

grant official act giving powers

intestacy the state of absence of a Will

intestate dying without making a Will

intestate estate the estate of a dead person in respect of which she/he has died without making a Will

jurisdiction authority to administer justice; hear and determine a case

minor a person who is under 18 years of age

own motion on its own without being asked to

petition for grant an application to a Court for a grant of letters

prescribed set or approved

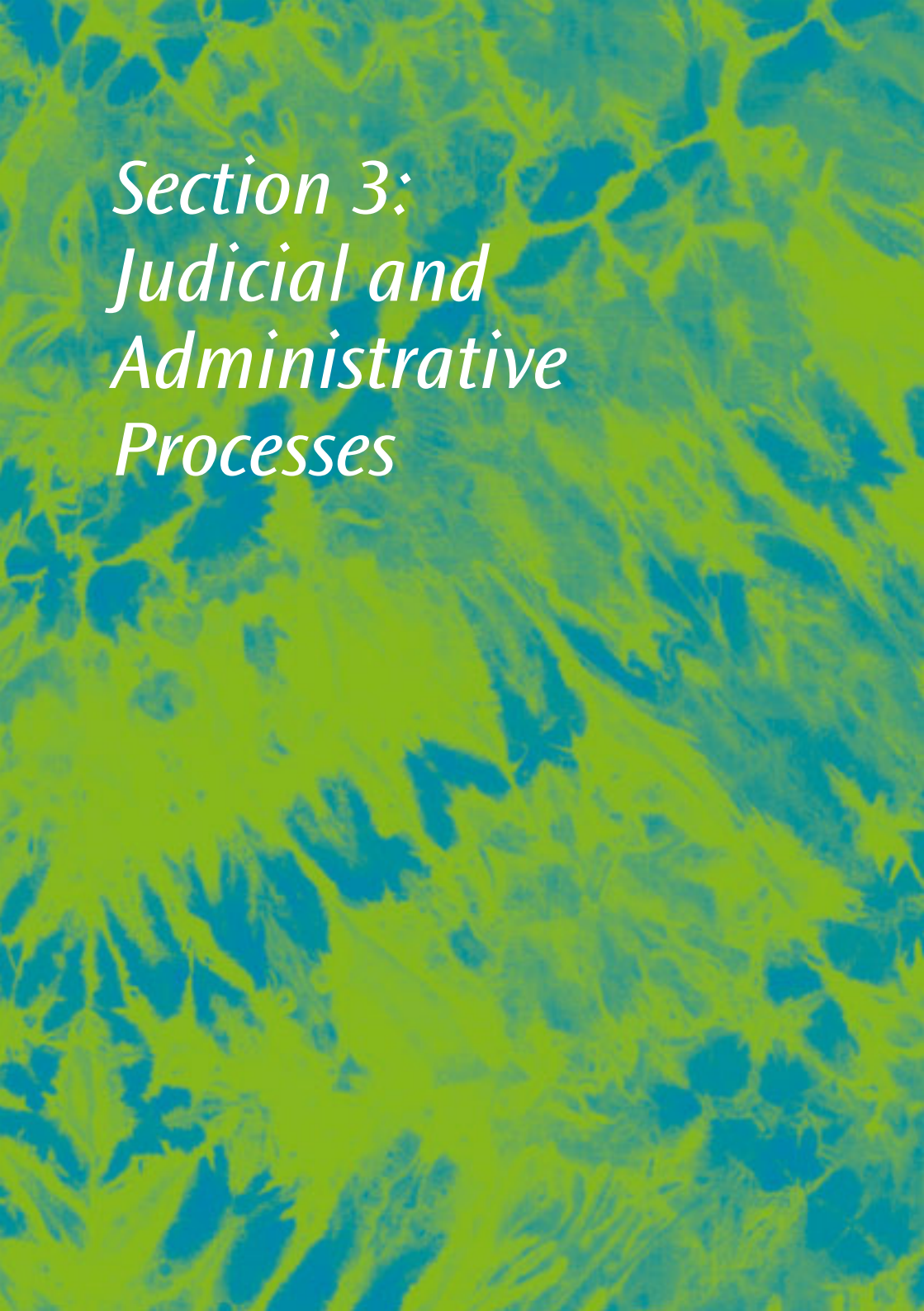
revoke cancel

spouse husband or wife

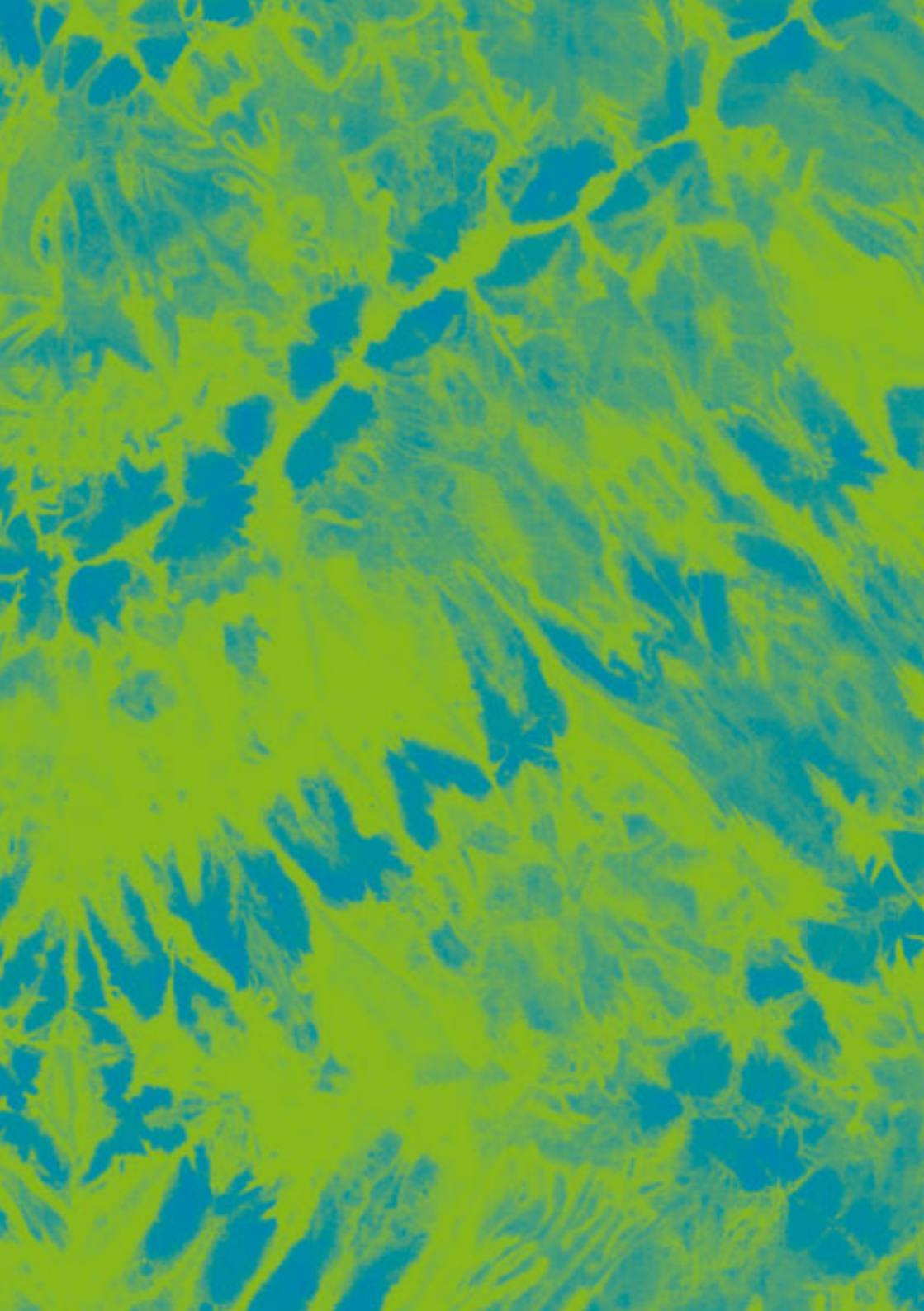
Testator the person making a Will

trustee a personal representative

Will a legal declaration by a person of his/her wishes regarding the disposition of his/her property after his/her death



*Section 3:
Judicial and
Administrative
Processes*



Section 3: Judicial and Administrative Processes

Domestic Legal Provisions Related to Judicial and Administrative Processes

Land Act No.6 of 2012

Land Registration Act No.3 of 2012

Environment and Land Court Act No.19 or 2011

Process of Compulsory Acquisition

The **Commission** is required by section 107 of the Land Act to:

- a) Publish in the **Gazette** and County **Gazette** a notice of intention to compulsorily **acquire** land;
- b) Deliver a copy of the notice to the **Registrar** who shall make an entry in the register of the intended acquisition;
- c) Serve a copy of the notice upon every person who appears to the **Commission** to be interested in the land.

Interested persons include any person whose **interests** appear in the Land Registry, the **spouse(s)** of any such person, any person in actual occupation of the land as well as the **spouse(s)** of that person.

Words you need to know

acquire to get or to obtain

Commission the National Land Commission

Gazette the Kenya Gazette or County Gazette

interest right or entitlement

Registrar Chief Land Registrar, County Land Registrars and Land Registrars appointed under sections 12 and 13 of the LRA

spouse wife or husband

Inquiry as to Compensation on Compulsory Acquisition of Land

At least 30 days after publication of the notice of intention to **acquire** land, the **Commission** is required, by section 112 of the Land Act, to fix a date to hear issues of propriety and claims for **compensation** by persons interested in the land. It is a **mandatory** requirement that the Commission publishes a notice of the **inquiry** in the **Gazette** and County **Gazette** at least 15 days before the **inquiry**.

The notice shall be served upon all those interested in the land calling upon them to deliver a written claim of **compensation** to the **Commission**. The written claims should be submitted to the **Commission** not later than the date of the **inquiry**.

The Compensation Hearing

For the purpose of an **inquiry**, the **Commission** has all the powers of the **Court** to summon and examine witnesses including persons interested in the land. It also has powers to compel production of documents of title to the land. The public body for whom the land is being **acquired** and all interested parties have a right to be heard, to produce evidence, and to call and to question witnesses at the **inquiry**.

At the hearing the **Commission** is required to **determine** those who are interested in the land and to receive written claims of **compensation**.

Award of Compensation - Section 113 of the LRA⁵³

The **Commission** is required by section 113 of the Land Act, 2012, to prepare a **written award** in which a separate award shall be made for every person whom the **Commission** has **determined** has an **interest** in the land. The award must specify the shares in which the **compensation** is payable to co-tenants. The award of the **Commission** is final and conclusive evidence of:

- a) The size of the land to be **acquired**;
- b) The value of the land; and
- c) The amount of **compensation** payable, whether the persons interested in the land have or have not appeared before the **Commission**.

53 LRA- abbreviation for Land Registration Act No. 3 of 2012

Notice of the Award

The **Commission** is required under section 114 of the Land Act, 2012, to serve a notice of the award on each person whom it has **determined** to have an **interest** in the land. Such notice shall include an offer of **compensation**.

However, according to section 114(2) of the Land Act, before taking possession of the land, the **Commission** may agree with the person who owned the land that instead of receiving an award, the person shall receive land of which the value does not exceed the amount of **compensation** offered. Upon conclusion of such agreement, the person will be considered to have received all the **compensation** she/he was entitled to.

According to section 120 of the Land Act, the **Commission** will take possession of the **acquired** land only after the **compensation** offered has been paid.

Words you need to know

acquire(d) to get or to obtain; got or obtained

compensation damages, reparation

Commission the National Land Commission

Court in this section means the Environment and Land Court established under the Environment and Land Court Act, No. 19 of 2011

determine(d) decide(d) or conclude(d)

Gazette the Kenya Gazette or the County Gazette

inquiry investigation, examination

interest right or entitlement

mandatory compulsory

written award a written decision containing a specified amount to be paid as compensation

Instruments Restricting Disposition

Inhibitions – Section 68 of the LRA

On the application of an interested party, the Court can make an order (**inhibition**) preventing the registration of any dealings in any land, lease or **charge**. The **inhibition** can be made for a particular period or until a further order is made. A copy of the order duly sealed by the Court is a **registrable** instrument and section 68 of the LRA **empowers** the **Registrar** to register it in the **appropriate register**.

Until such registration is made, the **inhibition** cannot have any **effect** on the land, lease or **charge**. As long as the **inhibition** remains registered, no instrument **inconsistent** with it can be registered.

Cancellation of Inhibition – Section 70 of the LRA

Registration of an **inhibition** can be cancelled in any of the following ways:

- a) On the expiry of the period stated in the **inhibition**;
- b) Upon proof to the **Registrar** of the occurrence of an event stated in the **inhibition**;
- c) On the land, lease or **charge** being sold by a **chargee** unless such sale is also inhibited by the **inhibition**;
- d) By a **consequent order** of the Court.

Lodging of Cautions – Section 71 of the LRA

A **caution** is a **registrable** instrument lodged with the **Registrar** to **prohibit** the registration of any **dispositions** of the land or the making of entries affecting the land, lease or **charge**. It can **prohibit** the registration of **dispositions** and the making of entries generally or to the extent expressed in the **caution**.

Who Can Lodge a Caution?

The following individuals can lodge a caution:

- a) Any person who claims a right to obtain an **interest** in the land, lease or **charge**. Such right must have been created by a **registrable** instrument;
- b) Any person entitled to a **license**;

c) Any person who has presented a **bankruptcy petition** against the **proprietor** of any land, lease or **charge**.

According to section 72 of the LRA, any other **disposition** that is **inconsistent** with the **caution** cannot be registered while the **caution** remains registered except with the **consent** of the **cautioner** or an order of the Court.

Words you need to know

appropriate register correct register

bankruptcy petition an application filed in the Court by a person who is owed money by the person against whom the application is made, or by the person who is unable to pay his/her debts, for an order that s/he should be declared unable to pay his debts, and that a trustee should be appointed to manage his/her financial affairs for purposes of paying debts

caution caveat, limitation

cautioner the person who has registered a caution

charge financial claim against a property

chargee the bank or financial institution to whom a charge has been given as security for the repayment of an advance of money or money's worth or to secure a condition

consent permission or approval

consequent order subsequent order

disposition dealings or transactions

effect consequence

empowers authorises

inconsistent not in agreement, contradictory

inhibition an order preventing registration of any dealings in land, leases or charge

license permit, authorisation

prohibit forbid, disallow or make illegal

proprietor owner

registrable capable of being registered

Registrar the Chief Land Registrar, County Land Registrars and any other persons appointed as such by the Public Service Commission

trustee includes a personal representative

Procedure for Withdrawal or Removal of Caution – Section 73 of the LRA

A **caution** can be withdrawn by the **cautioner**, removed by an order of the Court or the **Registrar**.

The procedure is as follows:

- a) Any person seeking the removal of a **caution** is required by section 73(2) of the LRA to make an application to the **Registrar** for such removal;
- b) Upon receipt of the application, the **Registrar** will serve a notice on the **cautioner** informing him/her that the **caution** will be removed at the **expiration** of the time stated in the notice;
- c) If the **cautioner** raises no objection, the **Registrar** may remove the **caution** at the expiry of the time stated in the notice;
- d) If the **cautioner** objects to the removal of the **caution**, the **Registrar** will hear the parties at his/her offices and make appropriate orders in the matter.

If the **caution** is withdrawn or removed by an order of the Court or **Registrar**, its registration shall be cancelled in accordance with section 73(6) of the LRA.

Restrictions – Section 73 of the LRA

The **Registrar** can on his/her **own motion**, or on application by an interested person, after hearing all those concerned, make an order

(**restriction**). A **restriction** may prohibit or restrict all dealings in any land, lease or **charge** or it may restrict or prohibit only those that do not comply with specified conditions.

A **restriction** can be expressed to **endure** for a particular period, until the occurrence of a particular event or until a further order is made. It is an instrument whose registration is **mandatory** according to section 76(2) (b).

Once a **restriction** has been entered, the **Registrar** is required under section 77 of the LRA to give notice, in writing, of the **restriction** to the **proprietor** affected by the **restriction**. An instrument that is **inconsistent** with the **restriction** cannot be registered while the **restriction** remains registered.

Removal or Variation of Restrictions⁵⁴

A **restriction** may be removed or varied at the **Registrar's own motion** or on the application of any person affected by the **restriction** and who desires to have the **restriction** removed. Before the removal, the **Registrar** is required to serve a notice of intention to remove the **caution** on the **proprietor**. If no objection is raised by the **proprietor**, the **restriction** may be removed.

If the **proprietor** objects to removal, the **Registrar** is required to **determine the matter** by giving the parties affected by the **restriction** an opportunity to be heard before appropriate orders are made.

Any person affected by a **restriction** can also apply to the Court to have the **restriction** removed.

Words you need to know

caution caveat, limitation

cautioner person who has registered a caution

charge financial claim against a property

determine the matter to decide the issue

endure to last or to remain in force for a particular period

expiration conclusion or termination

inconsistent not in agreement, contradictory

own motion on his own and without being called upon

mandatory compulsory

proprietor owner

Registrar the Chief Land Registrar, County Land Registrars and any other persons appointed as such by the Public Service Commission

restriction restricts or prohibits any dealings in land, lease or charge, or prohibit only those that do not comply with certain conditions



*Section 4:
Case Law*



Section 4: Case Law

Registration of Title

Absolute Rights of Registered Proprietor

The case of **Esiroyo v Esiroyo**⁵⁵ involved the rights of third parties over land registered under the Registered Land Act (now repealed). The registered proprietor of the land sued his two sons seeking to evict them from the land accusing them of constant family rows and fights with him hence his desire to exclude them from the land. They had forcefully entered the land and settled on it, although they had their own land elsewhere on which they lived. The sons relied on Luhya customary law to lay their claim on the land which the Court found was ancestral land.

Applying section 28 of the RLA which is similar to section 25 of the LRA, Kneller J (as he then was) held that rights under customary law were extinguished upon registration of land under the RLA and were not among the overriding interests listed in section 30 of the Act. Such registration gave the proprietor absolute rights over the land which could only be defeated as provided under the law. While section 30 listed overriding interests that every registration was subject to, a person who forcefully entered land registered in his father's name, more so

55 (1973)EALR 388

when he had his own land on which such a person lived, did not acquire any interest capable of recognition in law.

In **Obiero v Opiyo & 3 others**,⁵⁶ the Plaintiff was the widow of one **Opiyo** who died in 1938 while the defendants were the sons of the co-wife. The Plaintiff was the registered proprietor of the land in dispute measuring about nine acres. Before the Plaintiff's registration, there had been conflicting claims to the land by the defendants but these had been determined in her favour by the adjudication committee. The defendants who had lived on this land prior to registration claimed customary law rights over the land. Following the **Esiroyo** case, the Court (Bennett J), found that they never had any customary law rights in the land and that even if they had had such rights, they were extinguished upon registration. He categorically stated that as a registered proprietor, the title was 'free from all other interests and claims whatsoever' and issued an injunction restraining the defendants, their wives, servants or agents from continuing to trespass on the land in dispute.

Customary Law Resulting Trusts – Section 28(b) of the LRA

Although the registration of land extinguishes customary land rights, such registration does not relieve the proprietor of his/her obligation as a trustee. According to section 28 of the LRA, such trusts including customary law trusts are overriding interests protected in law. If a person holds land in a fiduciary capacity under customary law and has it registered under the statute, the customary law trust is transformed to the provisions of the statute and is protected.

In **Mukangu v Mbui**,⁵⁷ the subject matter of the case was ancestral land which was later registered in the name of the Appellant. His son (Respondent) had, with the knowledge and consent of the Appellant, lived on the land since 1956 and had built a permanent house on it. The Appellant sought to remove him from the land and settle him on another piece of land elsewhere. The Respondent claimed interest in the land and argued that since the subject had been ancestral land, the Appellant could only hold it subject to customary law trust in favour of the Respondent who had been residing on the land before registration and had continued to do so after registration. The High Court upheld the Respondent's case and the proprietor appealed.

Dismissing the appeal, the Court held that interests that arise in right only of possession or actual occupation of land without legal title to the land are equitable rights binding on the land and on the registered proprietor. Such rights possess legal sanctity without being noted on the register and are overriding interests which should be protected so that the person entitled to those rights continues in occupation of the land.

It was further held that since the Respondent had been in possession and occupation even before registration, such occupation and possession gave rise to a trust capable of protection under the law and he was entitled to remain in possession and occupation of the land in dispute.

56 1972 EA

57 Civil Appeal No. 281 of 2004 (Nyeri), (2004) e KLR Available at www.kenyalaw.org

Acquisition of Title by Prescription/Adverse Possession⁵⁸

In **Kanda Kimametu Chepkiyeng Kimamet Chebobei**,⁵⁹ the Applicant and the Respondent are brothers who owned land adjacent to one another. The Respondent fraudulently and secretly reduced the applicant's land by 6.5 acres and erected a boundary, making the disputed portion part of his land. He resided on a different piece of land elsewhere but the Applicant fenced the disputed portion together with his land and continued to openly cultivate the portion with the knowledge of the Respondent for a period of 27 years. The Respondent raised no objection to the Applicant's fencing and continued possession and cultivation all this time, neither did he assert his rights to the portion in dispute.

The Applicant filed this case seeking a declaration that he was entitled, by adverse possession, to the portion in dispute even though it was registered as part of the land of the Respondent. The Court held that since the Applicant had been in quiet, peaceful and uninterrupted possession and occupation of the land by way of cultivation for over 27 years and with the Respondent's knowledge, he had acquired title by operation of law through adverse possession. It ordered subdivision of the Respondent's land so that the portion in dispute, measuring 6.5 acres, be hived off and registered in the name of the Applicant.

In **Kasuve v Mwaani Investment Ltd & Another**,⁶⁰ any person who claims to have become entitled to land by adverse possession/prescription may apply to the High Court for an order that she/he be registered as the proprietor of the land. In the above case,

the Court of Appeal held that the Claimant must prove that she/he has been in exclusive possession of the land, openly and as of right and without interruption, for a period of at least 12 years either after dispossessing the owner or after the discontinuation of possession by the owner of his own volition.

Land Alienation

Transaction Void for Lack of Consent of the Land Control Board

Transactions concerning agricultural land situated within a land control area must receive the consent of the Land Control Board of the area in which it is situated. Lack of such consent renders the transaction void.

In **Leonard Njonjo Kariuki v Njoroge Kariuki alia Benson Njonjo**⁶¹ by a written agreement in 1971, the Respondent sold the suit land to the Appellant at KSh 5,000. The Appellant paid KSh 3,000 and took possession of the land. The Appellant filed suit in 1975 for orders that the contract be specifically performed. The suit land was agricultural land situated in a land control area.

The Respondent pleaded that the transaction was void for lack of consent of the Land Control Board. The Magistrate's Court ruled that the Respondent could not rely on that defense to avoid commitments he had entered into and ordered specific performance.

58 The Land Act 2012, Act No. 6 of 2012, section 7(d)

59 Eldoret HCCC No. 218 of 2000 (OS), (2009) eKLR Available at <http://www.kenyalaw.org>

60 (2004)1 EA

61 Civil Appeal No. 28 of 1979, eKLR, Available at <http://www.kenyalaw.org>

On appeal to the High Court, the magistrate's decision was reversed and the High Court ruled that the transaction was void for lack of consent of the Land Control Board.

The Appellant (Plaintiff) appealed against the decision of the High Court. The Court of Appeal held that since the subject land was agricultural land, situated in a land control area, consent of the Board was a mandatory requirement in terms of section 6 of the LCA.⁶²

Since such consent had not been sought within the time stipulated by the law, or at all, the Court held that the transaction was void for lack of consent of the Board. In allowing the appeal, the Court of Appeal further held that the only remedy available to the Appellant under section 7 of the LCA was recovery of the purchase price paid to the Respondent.

Family Law

Lack of Capacity to Make a Will

A Will shall be invalid if at the time it was made the state of mind of the Testator was such that she/he did not know what she/he was doing.

In the case of Julius Wainaina Mwathi v Beth Mbene Mwathi & another⁶³ the deceased, who had never married, died in 1987 leaving no children. He was survived by one brother (Appellant) and two sisters. The only property comprising his estate was a

piece of land. Two days before his death, he is said to have made a Will and bequeathed the land to the Appellant. According to the Appellant, the deceased dictated his wishes as the Appellant reduced them into writing after which the deceased thumb printed the Will. The Will was witnessed by the Appellant and his wife.

It transpired that on the date of the alleged Will, the Appellant removed the deceased from his mother's house and took him to the Appellant's house where the Will was made. The validity of the Will was challenged by the Respondents on the ground that it was not voluntary as the deceased was too sick to understand what he was doing. The High Court found that at the time when the alleged Will was made, the deceased was too sick and could not walk without support. The Court took in to account the conduct of the Appellant, who kept the Respondents away from the process, and found no evidence to prove that the deceased freely and consciously dictated the Will. It revoked the Will and granted the parties an equal share of the land in dispute.

The Court of Appeal concurred and found that the Appellant failed to discharge the onus of proving that he did not procure the execution of the alleged will by unfair means. However, the Court applied Kikuyu customary law and found that the Respondents were not entitled to inherit the land.

62 Chapter 301 of the Laws of Kenya, Available at <http://www.kenyalaw.org>
63 Civil Appeal No. 123 of 1992, Available at <http://www.kenyalaw.org>

Balancing the Rights of Dependents on Intestacy

In the case of **Irene Macharia v Margaret Wairimu Njomo**⁶⁴ the Appellant and the deceased were married under the African Christian Marriage and Divorce Act.⁶⁵ During the subsistence of the marriage, the deceased and the Appellant acquired landed property which was registered in their joint names. They had no child and they were legally separated in 1989.

Thereafter, the deceased started cohabiting with the First Respondent out of which relationship a daughter was born. There was no evidence of celebration of a marriage between the First Respondent and the deceased. The deceased died intestate leaving the landed property and a sum of KSh 186,000. The First Respondent failed to provide any evidence to support the existence of a marriage between her and the deceased and the Court found that she was not the wife of the deceased. The Appellant was the only wife entitled to inherit.

The Court considered that the landed property was passed to the widow by operation of the law since it was jointly owned and was not subject to distribution. The Court also held that she was in gainful employment and that the daughter of the deceased, who was a minor, was more entitled to the money than the Appellant.

So as not to be seen to have disinherited the Appellant, the Court awarded her KSh 10 out of the KSh 186,000. The rest of the money went to the minor daughter of the deceased.

Women's Property Rights Within and at Dissolution of Marriage

Property Registered in the Joint Names of Spouses

In *Kivuitu v Kivuitu*⁶⁶, the husband and wife agreed to buy a house for their occupation as the matrimonial home. The husband travelled to New York to attend sessions of the United Nations Security Council. The wife searched and found a suitable house, negotiated the purchase price and signed the sale agreement. All this was done with the concurrence of the husband. The husband paid the deposit and the mortgage installments. The husband had wanted to register the house in his sole name but the wife was opposed to this so it was registered in their joint names without specifying the shares of each party.

On dissolution of their marriage the wife filed suit seeking, among others, an order that since the house in dispute was matrimonial property it should be sold and the proceeds shared between her and the husband in equal shares. The High Court ruled that she was entitled to a quarter share in the house. Both parties appealed and the husband argued that the wife acted as his agent and was not entitled to a share in the house as she had made no financial contribution to its acquisition.

The Court (Omolo Ag. J A as he then was), in the leading judgment made the following observations which the rest of the Court agreed with and which formed the judgment:

64 (2008) 1 KLR 754, (1996) e KLR, Available at <http://www.kenyalaw.org>
65 Chapter 151 Laws of Kenya, available at <http://www.kenyalaw.org>
66 Civil Appeal No. 26 of 1985, Reported in (1991) 2 KAR 241

- a) If a husband acquires property from his salary or business and registers it in the joint names of himself and his wife without specifying any proportions, the Courts must take it that such property, being a family asset is owned in equal shares
- b) The wife made financial contributions to the family income and budget either through paid employment and family businesses.

The Court awarded the wife a 50 per cent share in the property and ordered a valuation to be carried out so that the husband pays half the value of the house to the wife.

Most importantly, though obiter, the learned Judge recognised that a wife's contribution to the acquisition of family property can be direct (financial) or indirect (by way of her services towards the welfare of the family). Such services can be quantified to entitle a wife to a share in matrimonial property.

The case of **Fathiya Essa v Mohamed Alibhai Essa**⁶⁷ was the first time that the Court considered whether the Married Women's Property Act 1882(MWPA) of England would apply to Kenyan Muslims in view of the fact that the Quran has elaborate principles regarding property acquired during marriage. The Court clarified that the MWPA would apply as much to Muslims as to other Kenyans, thereby rejecting the application of the principles of Islamic law.⁶⁸

The parties to this case contracted an Islamic marriage in 1972, which subsisted until 1988 when it was dissolved. At the time of the

marriage, the wife was in salaried employment while the husband ran a family business. The wife later resigned and was absorbed in the running of the family business. Three properties were acquired during the marriage. Two of these were registered in the sole name of the husband while the third one, the matrimonial home, was registered in their joint names. On dissolution of their marriage the wife applied to the Court for a declaration that each of the two properties registered in the husband's name was jointly owned by the parties and that they should be sold and the proceeds divided equally between the husband and wife. As for the matrimonial home which was registered in their joint names, the wife sought an order that the same should be divided equally between the parties.

Following **Kivuitu v Kivuitu** the Court (Omolo J A) in the leading judgment held that where property acquired during the subsistence of a marriage is registered in the joint names of the spouses, the law assumes that the property is held in equal shares. For the property registered in their joint names, the husband was ordered to pay half its value to the wife. With regard to the commercial property registered in the sole name of the husband, the wife proved that she had made a substantial contribution to its acquisition and it was held that she was entitled to a half share therein.

Omolo J A clarified that since the decision of the Court in **Kivuitu v Kivuitu**, although the law regarding the ownership of property registered in the joint names of spouses had been fairly

67 Civil Appeal No. 101 of 1995, Citation: (1995) LLR 384 (CAK) Available at <http://www.kenyalaw.org>

68 The principles that relate to ascertainment of property rights between spouses on divorce. Islamic marriages are generally governed by an ante-nuptial contract which prescribes the property rights of the parties.

settled, the Court in that case, did not lay any general principle of equality applicable to all properties acquired during the subsistence of a marriage.

In **Tabitha Wangechi Nderitu v Simon Nderitu Kariuki**⁶⁹, the parties were married under Kikuyu customary law. The husband was in a charcoal selling business while the wife was a housewife; she later, with assistance from the husband, started a business selling secondhand clothes. It was not in dispute that she always gave the proceeds of sale to the husband who banked it in his account at the Kenya Commercial Bank. All the property acquired during the marriage were registered in the sole name of the husband. Upon dissolution of the marriage in 1992, the wife applied to the court under the MWPA for orders that all the property acquired during the subsistence of the marriage was jointly owned by her and her husband. Both the High Court and Court of Appeal held that the MWPA being a statute of general application, applied to customary law marriages in Kenya.

A full bench of the Court of Appeal (five judges) was constituted to hear the appeal in **Peter Mburu Echaria v Priscilla Njeri Echaria**⁷⁰. This was pursuant to a request by counsel for the Appellant, who was asking the court to depart from the decision in Kivuitu's case. The request was in line with the practice of the court in all cases where the court is asked to depart from a previous decision.

The court held that the Kivuitu case dealt with property that was registered in the joint names of the spouses and was therefore correctly decided, both on facts and law as it did not lay any general principle of equal division of property. The Court of

Appeal was of the view that both Omolo Ag J A, as he then was, in the Kivuitu case and in subsequent cases, and Kwach J A, as he then was, in the Nderitu case, ‘though undoubtedly guided by a noble notion of justice to the wife were ahead of the Parliament when they said that the wife’s non-monetary contributions have to be taken into account and a value put on them.⁷¹

In the Echaria case, the court decided the entitlement of each spouse on the basis of their financial contribution and placed the wife’s financial contribution at KSh 72,000, which the court found amounted to a quarter share in the land in dispute; this translated to 30 acres of land. The court held that a wife claiming to be entitled to a property purchased during the subsistence of a marriage must prove a monetary contribution to its acquisition.

Property Rights of Women Under the Law of Succession

Right of Daughters to Inherit Family Land/Property on a Basis of Equality with Brothers

The courts have rendered progressive decisions on the rights of daughters to inherit family land/ property. In the case of **Rono v Rono & Another**⁷², the subject of the appeal was a piece of land comprising part of the estate of the deceased who died polygamous and intestate. The High Court, Nambuye J (as she then was), had ruled that although the daughters of the deceased were entitled

69 Civil Appeal No. 203 of 1997, eKLR Available at <http://www.kenyalaw.org>

70 Civil Appeal No. 75 of 2002, (2007), eKLR Available at <http://www.kenyalaw.org>

71 Civil Appeal No. 75 of 2002, (2007), eKLR, page 9. Available at <http://www.kenyalaw.org>

72 Civil Appeal No. 66 of 2002, Available at www.kenyalaw.org

to inherit the land of their father, they would each inherit a share that was less than that of their brothers because they would get married and also inherit from their husbands.

On appeal, the Court of Appeal upheld the provisions of section 38 of the LSA and the principle of non-discrimination on the basis of sex. The court set aside the distribution and found that the learned Judge had no factual basis for drawing a distinction between the sons on one side and the daughters on the other, and ruled that both the sons and daughters of the deceased were each entitled to an equal share (14.44 acres) in the land.

In the Matter of **the Estate of Lerionka Ole Ntutu**⁷³, the deceased, a member of the Maasai, a pastoral community in Kenya, died intestate. Maasai customs prohibit daughters of a deceased man from inheriting his land because it is expected that daughters will get married and inherit from their husband's clan. The sons of the deceased relying on this custom were opposed to their sisters inheriting the land that comprised the estate of their deceased father.

The High Court, Rawal J (as she then was), held that a customary law which denies daughters the right to inherit their father's land was repugnant to justice and morality and could not be applicable to the estate of the deceased. She made reference to human rights instruments that Kenya had ratified and ruled that the daughters of the deceased, together with their brothers, had an equal right to inherit their father's land.

The right of married daughters to inherit the land of their deceased father was confirmed by Koome J (as she then was) In the

matter of the **Estate of Mugo Wandia**.⁷⁴ The son of the deceased had urged the court to find that it was against Kikuyu customary law for a married daughter to inherit her father's land. Confirming the right of daughters to inherit their fathers land on a basis of equality with their brothers, the court made reference to Kenya's obligations at international and regional levels through human rights instruments the country had signed.

Right of Surviving Spouse to Inherit – Section 35(1) of the LSA

In **Elizabeth Karua M'Rutere v Joshua M'Ikiungu Kuura & 2 others**⁷⁵, the High Court confirmed the right of a surviving spouse (widow without sons) to inherit her deceased husband's land. In this case, the deceased was survived by a widow and daughters but no sons. Meru customary law prohibits a widow without sons from inheriting the land of her dead husband. Male relatives of the deceased relied on this custom to claim that they were entitled to inherit the land in dispute. They argued that since she did not have any sons and since her daughters were married, she held the land in their favour as a trustee and sought a court order to that effect.

The court held that no such trust existed and the male relatives of the deceased were not entitled to inherit the land in dispute. The court applied section 35(1) of the LSA and awarded the widow a life interest in the land to devolve upon her daughters upon her death. The life interest would determine if she were to re-marry.

73 High Court of Kenya sitting at Nairobi in HC Succession Cause No. 1263 of 2000 available at www.kenyalaw.org

74 High Court of Kenya sitting at Nakuru in High Court Succ Cause No. 320 of 2007: Available at <http://www.kenyalaw.org>

75 Meru HC Succ Cause No. 48 of 1983, eKLR available at <http://www.kenyalaw.org>

