



LAWS OF KENYA

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# THE LAND ACQUISITION ACT

CHAPTER 295

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**CHAPTER 295**

## THE LAND ACQUISITION ACT

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## CHAPTER 295

### THE LAND ACQUISITION ACT

47 of 1968,  
11 of 1970,  
13 of 1972,  
6 of 1990,  
11 of 1992.

*Commencement: 23rd August, 1968*

#### **An Act of Parliament to make provision for the compulsory acquisition of land for the public benefit**

#### PART I—PRELIMINARY

Short title.

**1.** This Act may be cited as the Land Acquisition Act.

Interpretation.

**2.** In this Act—

“award” means an award of compensation made under section 10;

“Commissioner” means the Commissioner of Lands, or any person authorized by the Minister in writing in any particular case to exercise the powers conferred on the Commissioner by this Act;

“Court” means the High Court;

“land” includes all land, whether covered with water or not, and things attached to the land, or permanently fastened to anything attached to the land, and (where the meaning may be inferred) any estate, term, easement, right or interest in or arising out of land;

“notice of intention to acquire”, in relation to land, means a notice that the Government intends to acquire the land published under section 6 (2);

“person interested”, in relation to land or a building, means a person who has an interest in or right over the land or building;

“public body” means—

(a) the Government; or

(b) any authority, board, commission or other body which has or performs, whether permanently or temporarily, functions of a public nature, or which engages or is about to engage in the exploitation of natural resources or the provision of power or any other activity which is of benefit to the public;

“Registrar” means the person responsible for the registration of title to the land in question.

“Tribunal” means the Land Acquisition Compensation Tribunal established under section 29.

6 of 1990, s. 2.

PART II—PROCEDURE FOR COMPULSORY ACQUISITION  
OF LAND

*Preliminaries to Acquisition*

3. Whenever the Minister is satisfied that the need is likely to arise for the acquisition of some particular land under section 6, the Commissioner may cause notice thereof to be published in the Gazette, and shall deliver a copy of the notice to every person who appears to him to be interested in the land.

Preliminary notice.

4. (1) The Commissioner may in writing authorize any person, together with servants and workmen, to enter upon any land specified in a notice published under section 3 and to survey the land and to do all things which may be reasonably necessary to ascertain whether the land is suitable for the purpose for which it may be required.

Power of entry for survey.

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

(a) he has first obtained the consent of the occupier; or

(b) failing consent, he has served on the occupier not less than seven days' notice in writing of his intention so to enter.

5. As soon as practicable after entry has been made under section 4, the Commissioner shall make good or pay full compensation for any damage resulting from the entry.

Payment for damage caused by entry for survey.

*Acquisition of Land*

6. (1) Where the Minister is satisfied that any land is required for the purposes of a public body, and that—

Notice of acquisition.

(a) the acquisition of the land is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and

(b) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person interested in the land,

and so certifies in writing to the Commissioner, he may in writing direct the Commissioner to acquire the land compulsorily under this Part.

(2) On receiving a direction under subsection (1), the Commissioner shall cause a notice that the Government intends to acquire the land to be published in the Gazette, and shall serve a copy of the notice on every person who appears to him to be interested in the land.

Effect of acquisition on plant and machinery.  
6 of 1990, s. 3.

**6A.** (1) Notwithstanding that plant and machinery are attached to land or permanently fastened to the land, the person interested in such plant and machinery may, after receipt by him of the notice of intention to acquire the land under section 6 (2) and not later than fifteen days before the inquiry appointed under section 9 (1), serve on the Commissioner a notice in writing that he desires to sever and remove the plant and machinery and the Commissioner shall within fifteen days, in writing, notify the person interested whether the plant and machinery may be severed and removed or whether they are required for the purpose for which the land is intended to be compulsorily acquired.

(2) Where the Commissioner notifies the person interested that the plant and machinery may be severed and removed the person interested shall sever and remove them at his own expense at any time before the Commissioner takes possession under section 19; and the plant and machinery shall not be included in the computation of the compensation payable under this Act.

Land to be marked out.

**7.** The Commissioner may cause the land which is to be acquired to be marked out and measured (if this has not already been done), and shall cause a plan of the land to be prepared.

#### *Award of Compensation*

Compensation to be paid.

**8.** Where land is acquired compulsorily under this Part, full compensation shall be paid promptly to all persons interested in the land.

Inquiry as to compensation.  
6 of 1990, s. 4.

**9.** (1) The Commissioner shall appoint a date, not earlier than thirty days and not later than twelve months after the publication of the notice of intention to acquire, for the holding of an inquiry for the hearing of claims to compensation by persons interested in the land, and shall—

(a) cause notice of the inquiry to be published in the Gazette at least fifteen days before the inquiry; and

(b) serve a copy of the notice on every person who appears to him to be interested or who claims to be interested in the land.

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

(3) On the date appointed under subsection (1), the Commissioner shall—

(a) make full inquiry into and determine who are the persons interested in the land;

(b) make full inquiry into the value of the land, and determine that value in accordance with the principles set out in the Schedule; and

(c) determine, in accordance with the principles set out in the Schedule, what compensation is payable to each of the persons whom he has determined to be interested in the land.

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

Provided that a postponement or an adjournment under this subsection shall not extend the inquiry beyond twenty-four months from the date appointed under subsection (1) for the holding of the inquiry.

(4A) Where an inquiry is not held within the time prescribed under this section the Minister shall be deemed to have revoked his direction to acquire the land and section 23 shall *mutatis mutandis* apply.

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

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

Award of  
compensation.

**10.** (1) Upon the conclusion of the inquiry, the Commissioner shall prepare a written award, in which he shall make a separate award of compensation to each person whom he has determined to be interested in the land.

(2) Every award shall be filed in the office of the Commissioner, and, subject to section 75 (2) of the Constitution and sections 18 and 29 of this Act, shall be final and conclusive evidence of—

- (a) the area of the land to be acquired;
- (b) the value, in the opinion of the Commissioner, of the land;
- (c) the amount of the compensation payable, whether the persons interested in the land have or have not appeared at the inquiry.

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

(4) Where an interest in land is held by two or more persons as tenants in common, the award shall state—

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

Notice of award.

**11.** On making an award, the Commissioner shall serve on each person whom he has determined to be interested in the land a notice of the award and offer of compensation.

Grant of land in lieu  
of award.  
Cap. 280.

**12.** (1) Notwithstanding anything contained in the Government Lands Act, where the land is acquired for the Government the Commissioner may agree with the person whom he has determined to be the proprietor of the land that that person, instead of receiving an award, shall receive a grant of land, not exceeding in value the amount of compensation which the Commissioner considers would have been awarded, and upon the conclusion of the agreement that person shall, subject to section 18, be deemed conclusively to have been awarded and to have received all the compensation to which he is entitled in respect of his interest.

(2) An agreement under subsection (1) shall be recorded in the award.

*Payment of Compensation*

**13.** (1) After notice of an award has been served under section 11 on all the persons determined to be interested in the land, the Commissioner shall, as soon as practicable, pay compensation in accordance with the award to the persons entitled thereunder, except in a case where—

Payment of compensation.

(a) there is no person competent to receive payment; or

(b) the person entitled does not consent to receive the amount awarded; or

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

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

**14.** (*Repealed by 13 of 1972, Sch.*)

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

Payment in error.

**16.** (1) Where the amount of any compensation awarded is not paid or paid into Court on or before the taking of possession of the land, the Commissioner shall pay interest on the amount awarded at such rate as may be prescribed which shall not be less than six per cent per annum from the time of taking possession until the time of payment or payment into Court.

Payment of interest.  
6 of 1990, s. 5.

(2) Where additional compensation is payable under section 18, there shall be added to the amount of the additional compensation interest thereon at such rate as may be prescribed which shall not be less than six per cent per annum from the time when possession was taken or compensation was paid, whichever is the earlier.

*Survey of Remaining Land*

**17.** Where part only of the land comprised in documents of title has been acquired, the Commissioner shall, as soon as practicable, cause a final survey to be made of all the land acquired.

Survey where part only of holding acquired.

Additional compensation where area found to be greater.

**18.** Whenever the final survey provided for in section 17 discloses that the area of the land acquired is greater than the area of the land in respect of which the award has been made, compensation shall be paid for the excess area in accordance with this Act.

*Taking of Possession and Vesting*

Formal taking of possession and vesting.  
6 of 1990, s. 6.

**19.** (1) After the award has been made, the Commissioner shall take possession of the land by serving on every person interested in the land a notice that on a specified day, which shall not be later than sixty days after the award has been made, possession of the land and the title to the land will vest in the Government.

(2) In cases of urgency, the Minister may direct the Commissioner to take possession of uncultivated or pasture or arable land upon the expiration of thirty days from the date of publication of the notice of intention to acquire, and on the expiration of that time the Commissioner, notwithstanding that no award has been made, shall take possession of that land in the manner prescribed by subsection (1).

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

- (a) the registered proprietor of the land; and
- (b) the Registrar,

a notice that possession of the land has been taken and that the land has vested in the Government.

(4) Upon taking of possession, the land shall vest in the Government absolutely free from encumbrances.

Surrender of documents of title to Commissioner.

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

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

- (a) where the whole of the land comprised in the documents has been acquired, cancel the documents;
- (b) where only part of the land comprised in the documents has been acquired, record upon the documents that so much of the land has been acquired under this Act and thereafter return the documents to the person by whom they were delivered,

and upon such receipts, or if the documents are not forthcoming, cause an entry to be made in the register recording the acquisition of the land under this Act.

*Supplemental*

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

Part only of building not to be acquired.

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

Provided that such person may, at any time before the Commissioner has made an award, withdraw or modify his statement by notice in writing served on the Commissioner.

(2) Where a question arises whether or not any part of a building is reasonably required for the full and unimpaired use thereof, and the parties cannot agree thereon, the matter shall be referred by the Commissioner to the Court in accordance with section 28 for determination.

**22.** (1) Where the Minister is of the opinion that a claim for compensation which a person interested in the land has made on account of the severing of the land to be acquired from his other land is unreasonable or excessive, the Minister may, at any time before taking possession of the land, in writing direct that the whole or any portion of the remaining land shall be acquired under this Act.

Acquisition of other land where severance.

(2) On the giving of a direction under subsection (1), the Commissioner shall without delay serve on the person interested a copy of the order, and thereafter shall proceed to make an award.

**23.** (1) The Minister may, at any time before possession is taken of any land acquired under this Act, revoke his direction to the Commissioner to acquire the land, and in that case the Commissioner shall determine and pay compensation for all damage suffered and all costs and expenses reasonably incurred by persons interested in the land by reason of or in consequence of the proceedings for acquiring the land.

Withdrawal of acquisition.

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

## PART III—TEMPORARY POSSESSION OF LAND

Power to obtain temporary occupation of land.

**24.** (1) Where the Minister is satisfied that the possession of any land is required for a particular period not exceeding five years by a public body, and that—

- (a) the possession of the land is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and
- (b) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property,

and so certifies in writing to the Commissioner, he may direct the Commissioner to take possession of the land for that period under this Part.

(2) On receiving a direction under subsection (1), the Commissioner shall serve on every person interested or who claims to be interested in the land, or on such of them as after reasonable inquiry are known to him, a notice that he has been directed to take possession of the land for the period in question.

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

Payment of compensation.

**25.** (1) Where possession is taken of land under this Part, full compensation shall be paid promptly to all persons interested in the land.

(2) As soon as practicable after entry on land has been made under section 24 (3), the Commissioner shall serve a notice in writing in the prescribed form on the persons who appear to him to be interested in the land, and shall make such offer of compensation as is fair in all the circumstances of the case.

(3) The compensation payable under subsection (1) may be in the form of a single sum of money or in the form of periodical payments of money, or in such other form as may be agreed.

**26.** On the expiration of the period for which possession is taken, or upon the land being sooner vacated, the land shall be restored by the Commissioner to the condition it was in before that occupation or use and, failing restoration, compensation in addition to that provided for in section 25 shall be paid for any damage done to the land, or for the reduction in the value of the land by reason of the occupation or use. Restoration of land.

**27.** Whenever the Minister is satisfied that any land of which the occupation or use has been secured under this Part is needed solely as a means of access to other land, then— Where land needed for access.

- (a) the use of the land shall extend to the passage of vehicles of all kinds, including heavy machinery, whether owned or operated by the public body occupying or using the land or by any contractor or servant employed by that body; and
- (b) the compensation to be paid under section 25 shall be limited to the damage done to trees, plants, growing crops and permanent improvements on the land, together with a periodical sum for diminution in the profits of the land and of adjoining land by reason of that use.

#### PART IV—DETERMINATION OF QUESTIONS BY THE COURT

**28.** (1) The Commissioner may at any time of his own accord, by application in the prescribed form, refer to the Court for its determination any question as to— Reference to Court by Commissioner.

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

(2) Without prejudice to the powers of the Court under this Part, the costs of any reference to the Court under subsection (1) shall be paid by such person as the Court may direct or, failing a direction, by the Commissioner.

Access to the High Court and appeals to the Court of Appeal. 6 of 1990, s. 7. 11 of 1992, Sch.

**29.** (1) The right of access to the High Court conferred by section 75 (2) of the Constitution of an interested person shall be by way of appeal (exercisable as of right at the instance of the person interested) from the decision of the Tribunal.

(2) There shall be established a Tribunal to be known as the Land Acquisition Compensation Tribunal which shall consist of five members appointed by the Minister by notice in the Gazette of whom—

- (a) one shall be an advocate of not less than ten years' standing, who shall be the chairman; and
- (b) two shall be registered valuers of not less than ten years' standing.
- (c) one shall be a prominent businessman of not less than thirteen years standing; and
- (d) one shall be a prominent farmer of not less than ten years standing.

(3) A member of the Tribunal shall hold office for the period, not exceeding three years, specified in the instrument of his appointment unless, prior to the expiration of that period—

- (a) he resigns his office by written notice addressed to the Minister; or
- (b) the Minister being satisfied that the member is unfit by reason of mental or physical infirmity to perform the duties of his office, or that the member has failed to attend at least three consecutive meetings of the Tribunal, revokes his appointment.

(4) The members of the Tribunal shall be paid such allowances or other remuneration as the Minister in consultation with the Treasury may authorize out of moneys provided by Parliament for the purposes of the Tribunal.

(5) The members of the Tribunal shall not be personally liable for any act or default of the Tribunal done or committed in good faith in the course of exercising the powers conferred by this Act.

(6) There may be appointed such staff as are necessary to assist the Tribunal in the performance of its duties under this Act.

(7) A person interested who is dissatisfied with the award of the Commissioner may apply to the Tribunal in the prescribed manner for—

- (a) the determination of his interest or right in or over the land; or
- (b) the amount of compensation awarded to him under section 10; or
- (c) to amount of compensation paid or offered to him under section 5, 9, 23, 25 or 26.

(8) The public body for whose purposes the land is acquired may apply to the Tribunal against—

- (a) the amount of compensation awarded under section 10; or
- (b) the amount of compensation paid or offered under section 5, 9, 23, 25 or 26.

(9) If, on an application to the Tribunal, the sum which in the opinion of the Tribunal ought to have been awarded as compensation is greater than the sum which the Commissioner did award as compensation, the Tribunal may direct that the Commissioner shall pay interest on the excess at such rate as may be prescribed which shall not be less than six per cent per annum from the date on which the Commissioner took possession of the land to the date of payment of the excess into court or to the person entitled.

(10) A party to an application to the Tribunal who is dissatisfied with the decision of the Tribunal thereon may, in the manner prescribed under section 72(3) of the Constitution, appeal to the court on any of the grounds of the application to the Tribunal and on any of the following grounds, namely—

- (a) the decision of the Tribunal was contrary to law or to some usage having the force of law;
- (b) the decision failed to determine some material issue of law or usage having the force of law; or
- (c) a substantial error or defect in the procedure provided by or under this Act has produced error or defect in the decision

of the case upon the merits.

(11) A party to an appeal under subsection (10) to the court who is dissatisfied with the decision of the court thereon may, upon giving notice of appeal to the other party or parties to that appeal within fifteen days after the date on which a notice of that decision has been served upon him, appeal to the Court of Appeal from the order made by the court; but an appeal to the Court of Appeal under this subsection may be made on a question of law only.

#### PART V—GENERAL

Right of entry.

**30.** The Commissioner and any officer or person authorized by him under section 4 shall have the right at all reasonable times to enter upon any land in furtherance of any of the purposes of this Act.

Application for police assistance.

**31.** If the Commissioner is opposed or impeded in taking possession of any land under this Act, he may apply to a police officer for assistance in taking possession, and the police officer shall thereupon take such steps as he may consider necessary to put the Commissioner in possession of the land.

Penalty for obstruction.

**32.** A person who wilfully hinders or obstructs the Commissioner or an officer or person mentioned in section 30 or section 31 in doing any of the acts authorized or required by this Act, or who wilfully fills up, destroys, damages or displaces any trench, post or mark made or put on land under this Act, shall be guilty of an offence and liable to imprisonment for a term not exceeding one month or to a fine not exceeding one thousand shillings, or to both.

Service of notices.

**33.** A notice which may be given under this Act may be served on a person—

- (a) by delivering it to the person personally; or
- (b) by sending it by registered post to the person's last known address or his last known address in Kenya; or
- (c) if the whereabouts of the person or his address cannot, after reasonable inquiry, be ascertained, by leaving it with the occupier of the land concerned or, if there is no occupier, by affixing it upon some prominent part of the land; or
- (d) if the person is a body corporate, society or other association of persons, by serving it personally on a secretary, director or other officer thereof or on a person concerned or acting in the management thereof, or by leaving it or sending it by

registered post addressed to the body corporate, society, or, if there is no registered office, at any place where it carries on business, or, if there is none, by leaving it with the occupier of the land concerned, or, if there is no occupier, by affixing it upon some prominent part of the land.

**34.** No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming under any such award or agreement shall be liable to pay a fee for a copy thereof. Exemption from stamp duty.

**35.** Except as otherwise provided in the Constitution, no proceeding shall be brought in any court to set aside or question an award. Bar to setting aside awards.

**36.** The Minister may make rules generally for carrying out the purposes and provisions of this Act. Rules.

## SCHEDULE (ss. 9 (3) and 23 (2))

### PRINCIPLES ON WHICH COMPENSATION IS TO BE DETERMINED

11 of 1970, Sch.,  
13 of 1972, Sch.,  
6 of 1990, s. 8.

1. (1) For the purposes of this Schedule, “market value” in relation to land means the market value of the land at the date of publication in the Gazette of the notice of intention to acquire the land. Market value.

(2) In assessing the market value, the effect of any express or implied condition of title or law which restricts the use to which the land concerned may be put shall be taken into account.

(3) If the market value of land has been increased, or is currently increased, in either of the following ways, the increase shall be disregarded—

(a) an increase by reason of an improvement made by the owner or his predecessor in title within two years before the date of publication in the Gazette of the notice of intention to acquire the land, unless it is proved that the improvement was made bona fide and not in contemplation of proceedings for the acquisition of the land;

(b) an increase by reason of the use of the land or premises thereon in a manner which could be restrained by a court or is contrary to the law, or is detrimental to the health of the occupiers of the premises or to the public health.

Matters to be considered in determining compensation.

2. In determining the amount of compensation to be awarded for land acquired under this Act, the following matters, and no others, shall be taken into consideration—

- (a) the market value as determined in accordance with paragraph 1;
- (b) damage sustained or likely to be sustained by persons interested at the time of the Commissioner's taking possession of the land by reason of severing the land from his other land;
- (c) damage sustained or likely to be sustained by persons interested at the time of the Commissioner's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner or his actual earnings;
- (d) if, in consequence of the acquisition, any of the persons interested is or will be compelled to change his residence or place of business, reasonable expenses incidental to the change;
- (e) damage genuinely resulting from diminution of the profits of the land between the date of publication in the Gazette of the notice of intention to acquire the land and the date the Commissioner takes possession of the land.

3. In determining the amount of compensation to be awarded for land acquired under this Act, the following matters shall not be taken into consideration—

- (a) the degree of urgency which has led to the acquisition;
- (b) any disinclination of the person interested to part with the land;
- (c) damage sustained by the person interested which, if caused by a private person, would not be a good cause of action;
- (d) damage which is likely to be caused to the land after the date of publication in the Gazette of the notice of intention to acquire the land or in consequence of the use to which the land will be put;
- (e) any increase in the actual value of the land as at the date of publication of the notice of intention to acquire likely

Matters to be ignored.  
6 of 1990, s. 8.

to accrue from the use to which the land will be put when acquired;

- (f) any outlay on additions or improvements to the land, incurred after the date of publication in the Gazette of the notice of intention to acquire the land, unless the additions or improvements were necessary for the maintenance of any building in a proper state of repair.

4. To the amount of compensation so determined there shall be added a sum equal to fifteen per cent of the market value as determined in accordance with paragraph 1, by way of compensation for disturbance. Addition of 15 per cent.

5. Where, at an inquiry made by the Commissioner under section 9, a person interested has— Additional provisions and professional fees.

- (a) claimed compensation for any land or any interest therein, that person shall not at any time be awarded an amount beyond the amount claimed;

- (b) refused, or omitted without sufficient reason to be allowed by the Court, to make a claim for compensation, that person shall not at any time be awarded an amount beyond the amount awarded by the Commissioner.

[Subsidiary]

**SUBSIDIARY LEGISLATION****Rules under section 75 (3) of the Constitution in respect of appeals under section 29 of the Act—**L.N. 111/1970,  
L.N. 20/1971.**THE LAND ACQUISITION (APPEALS TO THE  
HIGH COURT) RULES**

## PART I—PRELIMINARY

Citation.

1. These Rules may be cited as the Land Acquisition (Appeals to the High Court) Rules.

Interpretation.

2. (1) In these Rules, unless the context otherwise requires—

“the Act” means the Land Acquisition Act;

“appeal” means an appeal to the Court brought pursuant to the provisions of section 29 of the Act;

“appropriate registry” has the meaning accorded by rule 6;

“decision in question” means (as the case may be) the determination by the Commissioner of the interest or right of the appellant in or over the land the subject of proceedings under the Act, the award by the Commissioner of compensation under section 10 of the Act, the payment of compensation under section 5, 23 or 26 of the Act, or the offer of compensation under section 25 of the Act, being the subject of an appeal;

“interested person” means a person (other than an appellant or the Commissioner) who claims or is stated to be liable to be interested in or adversely affected by the result of an appeal;

“notice of intention to appear” has the meaning accorded by rule 7 (1);

“person” includes a public body for the purposes of which land is acquired within the meaning of section 29 (2) of the Act;

“register” means a register of appeals to be maintained pursuant to the provisions of rule 5;

“registrar” means the registrar, a deputy registrar or a district registrar of the High Court;

“registry” means the Central Office of the High Court in Nairobi or a district registry of the Court.

(2) Subject to paragraph (1) the words and expressions defined in the Act shall have the meanings thereby assigned to them.

## PART II—INSTITUTION AND HEARING OF APPEALS

3. (1) Every appeal shall be preferred in the form of memorandum of appeal presented in duplicate to the registrar; and both the original and the duplicate memorandum shall be signed by the appellant or his advocate and there shall be annexed thereto a true copy of the notification (if any) given to the appellant by the Commissioner informing him of the decision in question. Memorandum of appeal.

(2) The memorandum shall state concisely in paragraphs numbered consecutively—

- (a) the name, description and postal address in Kenya of the appellant, together with the name and postal address of the advocate (if any) who is representing him in the appeal;
- (b) the date, reference or identification number and other short particulars of the decision in question, together with the land reference number or other details of the land the subject of that decision sufficient to enable the land to be identified;
- (c) short particulars of any special facts upon which the appellant will seek to rely at the hearing of the appeal;
- (d) the question or questions upon which the appellant seeks the decision of the Court;
- (e) the grounds upon which the appellant intends to rely in support of the appeal;
- (f) whether the appellant intends to adduce at the hearing expert evidence as to a question of valuation; and
- (g) the name and address of any other person likely to be interested in or adversely affected by the appeal so far as known to the appellant with short details of the way in which that person may be interested or affected.

(3) There shall be annexed to the memorandum an affidavit of the appellant or his advocate verifying the special facts set out therein in support of the appeal.

(4) In the memorandum the Commissioner shall in the first instance be named as respondent to the appeal, but every other person who considers that he is or may be interested in or adversely affected by the results of the appeal may apply to the Court to be added as an additional respondent, and the Court may direct that he be so added.

(5) Where the decision in question appears to affect adversely more persons than one any one or more of those persons may appeal from the decision, and where two or more of those persons join together in preferring an appeal the provisions of these Rules shall have effect *mutatis mutandis* in relation to

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each appellant.

(6) Every memorandum of appeal and verifying affidavit shall be in the form set out in the Schedule with such variations as may be necessary.

(7) The postal address of the appellant or of his advocate to be stated in the memorandum as required by paragraph (2) shall, unless and until a change thereof shall have been notified to the registrar in writing, constitute the address of the appellant for the purpose of the service of notices and for all other purposes relative to the appeal.

Presentation of memorandum of appeal.

4. A memorandum of appeal shall be presented to the registrar within thirty days from the date upon which notification in writing (if any) of the decision in question was served upon the appellant, but the Court may in any case in the interests of justice and for sufficient reason to be recorded extend the time for presentation whether or not the time prescribed by this rule has already expired.

Registrar of appeals.

5. (1) There shall be maintained in each High Court civil registry of a book to be known as the "Register of High Court Appeals under Section 29 of the Land Acquisition Act" in which there shall be entered by the registrar particulars of every appeal preferred to the Court at that registry.

(2) Upon being presented with a memorandum of appeal which appears to him to comply with the provisions of these Rules the registrar shall forthwith—

- (a) endorse on the original and duplicate of the memorandum the date of presentation and the number of the appeal as recorded in the register;
- (b) enter in the register particulars of the appeal as required by the form of the register, each appeal to be numbered consecutively in order of presentation during the calendar year;
- (c) forward to the Commissioner the duplicate copy of the memorandum when endorsed as provided by subparagraph (a);
- (d) forward to the appellant and to his advocate (if any) an acknowledgement of the receipt of the memorandum, together with particulars of the number accorded to the appeal in the register;
- (e) send to every person (other than the appellant and the Commissioner) who is stated in the memorandum as likely to be interested in or adversely affected by the appeal notice of the presentation of the memorandum and of the time within which that person may intimate to the registrar his desire to appear and be heard on the hearing of the appeal as provided by rule 7.

Commissioner to serve notice.

6. (1) The Commissioner shall within twenty-one days of the receipt by him of a duplicate memorandum of appeal cause to be served on the registrar at the registry from which the memorandum has been received (in these Rules referred to as "the appropriate registry") and on the appellant a notice of receipt

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and of his agreement or disagreement in whole or in part (as the case may be) with the contents of the memorandum.

(2) In the event of the Commissioner omitting so to cause notice to be served on the registrar of his disagreement (if any) with the contents he shall be deemed to have accepted them as correct.

7. (1) Every interested person (whether mentioned in the memorandum or not) who desires to appear and be heard on the hearing of an appeal shall give to the registrar at the appropriate registry a notice to that effect (in these Rules called a "notice of intention to appear") within fourteen days or such longer period as the registrar having regard to the circumstances of the case may fix:

Interested persons may appear.

Provided that the Court may in any case for reasons to be recorded permit an interested person who has omitted to give notice to be heard notwithstanding the absence of a notice.

(2) A person giving notice of intention to appear under this rule shall state in the notice short particulars of the following matters—

- (a) whether he has been notified that an appeal has been presented to the High Court, and, if so, by whom and on what date he was so notified;
- (b) the manner in which he may be interested in or adversely affected by the appeal or in which for any other reason he claims to be entitled to be heard on the appeal;
- (c) whether he intends to appear alone or jointly with some other person;
- (d) whether he wishes to be supplied with a copy of the memorandum of appeal and of any relevant notice of intention to appear which has been or may be received by the registrar from any other person;
- (e) the order or other relief which he seeks and the grounds on which he intends to rely;
- (f) whether he intends to adduce at the hearing expert evidence as to a question of valuation;
- (g) an address within the jurisdiction at which documents may be served upon him.

(3) The registrar shall, on being requested so to do by any person who has given notice of intention to appear, supply to that person without delay a copy of the memorandum of appeal and of any relevant notice of intention to appear received by the registrar from any other person.

8. When in the opinion of the registrar all necessary parties have been served with copies of the proceedings as required the registrar shall by notice

Setting appeal down for hearing.

## [Subsidiary]

inform all parties that the appeal is ready to be set down for hearing and shall invite them to appear before him on a day and time to be named by him in the notice (not being less than ten days from the date of service of the notice) to fix the hearing date; and on that day the registrar in the presence of such of the parties (or of their advocates) as may present themselves shall fix the hearing date and shall forthwith notify all the parties in writing of the date so fixed.

Number of judges.

9. (1) Every appeal unless otherwise directed shall be heard and determined by one judge; but the Chief Justice may direct that an appeal be heard and determined by a court consisting of three judges, in which event, should there be a division of opinion, the decision of the majority shall prevail.

(2) Interlocutory applications may be heard and determined by a single judge sitting in Chambers and shall be brought before him by means of a summons for that purpose.

## PART III—GENERAL

Service of notices.

10. Every notice required by these Rules to be given may be served in any of the modes of service mentioned in section 33 of the Act.

Fees.

11. (1) No fee shall be chargeable on the presentation of a memorandum of appeal and verifying affidavit or of a notice of intention to appear or in respect of the furnishing by the registrar of copies thereof to any person entitled to them under these Rules, but the registrar shall be entitled to recover from Commissioner or from such other party to the proceedings as the Court may direct, the expenses incurred by the registry in the preparation of copies of other documents and in the service of notices in the matter.

Cap. 8,  
Sub. Leg.

(2) Subject to the provisions of paragraph (1) the fees specified in the Schedule to Part IX of the High Court (Practice and Procedure) Rules in respect of civil matters shall where appropriate be payable to the registrar in regard to the matters specified therein.

Costs.

12. (1) The costs of any person other than the Commissioner of or in relation to an appeal shall be in the discretion of the Court and costs awarded by the Court shall in the absence of agreement be taxed in accordance with the provisions of the Advocates (Remuneration) Order relative to appeals from a subordinate court so far as they may be appropriate.

Cap.16,  
Sub. Leg.

(2) The Court may, if it is satisfied that an appeal is clearly frivolous or that its presentation constituted an abuse of the process of the Court, direct that the costs and expenses of the Commissioner incurred in the matter shall when taxed be paid in whole or in part by the appellant or, of more than one, by some one or more of them.

Application of Civil  
Procedure Act and  
rules thereunder.  
Cap. 21.

13. Subject to the provisions of these Rules, and so far as they do not apply, the provisions of the Civil Procedure Act and of rules made thereunder and the practice of the Court in relation thereto shall have application to proceedings under these Rules.

[Subsidiary]  
Limit of application  
of Rules.

14. These Rules shall not apply to—

- (a) proceedings touching the legality of the taking of possession or of the acquisition of any property, interest or right within the meaning of section 75 (2) (a) of the Constitution; or
- (b) proceedings for the purpose of obtaining prompt payment of compensation under section 75 (2) (b) of the Constitution; or
- (c) proceedings for the determination by the Court of questions submitted to it by the Commissioner pursuant to the provisions of section 28 (1) of the Act.

**SCHEDULE**

(rr 3 (6), 7)

FORM 1

MEMORANDUM OF APPEAL

In the High Court of Kenya at .....

Land Acquisition Act Appeal No. .... of 19.....  
between

A.B.

Appellant

and

The Commissioner of Lands

Respondent

MEMORANDUM OF APPEAL PREFERRED PURSUANT TO THE PROVISIONS OF  
THE LAND ACQUISITION (APPEALS TO THE HIGH COURT) RULES

Pursuant to the provisions of the above-mentioned Rules, I, (*name in full, description and postal address*), the appellant herein, hereby appeal against the under-mentioned decision upon the grounds set out below.

1. Decision (*give short particulars stating whether the decision in question is—*

- (i) *a determination by the Commissioner of the interest or right of the appellant in or over the land as referred to in section 29 (1) (a) of the Land Acquisition Act; or*
- (ii) *an award of compensation under section 10 of the Act; or*
- (iii) *a payment of compensation under section 5, 23 or 26 of the Act; or*
- (iv) *an offer of compensation under section 25 of the Act).*

2. Land (*give short description of the land, stating the province, district, municipality or township in which it is situated, together with its land reference number or other identifying number*).

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3. The appellant will rely upon the following special facts in support of the appeal: *(set out)*.

4. The question for the determination of the Court is *(set out)*.

5. The appellant will rely in support of the appeal upon the following grounds: *(set out)*.

6. It is intended *(or not intended)*\*to adduce expert evidence as to a question of valuation.

7. The names and addresses of the only other persons who may be interested in or adversely affected by the result of the appeal, so far as is known to the appellant, are *(set out in numbered subparagraphs)*.

8. *(Set out the name and address of the advocate(if any) representing the appellant):*

Dated this ..... day of ....., 19.....

.....  
*(Signature of appellant or his advocate).*

\*Strike out as appropriate.

FORM 2 AFFIDAVIT OF VERIFICATION

I, *(name in full)*, the appellant herein, hereby state that I have read the foregoing memorandum of appeal and that the special facts set out in paragraph 3 thereof are true and accurate to the best of my knowledge, information and belief.

Sworn *etc.*

This memorandum and affidavit are presented by *(state whether by the appellant in person or by his advocate)*.

FORM 3 NOTICE OF INTENTION TO APPEAR ON THE HEARING OF THE APPEAL

*(Heading as in Form 1)*

To the Registrar of the High Court of Kenya at .....  
TAKE NOTICE that pursuant to the provisions of rule 7 of the Land Acquisition (Appeals to the High Court) Rules, I, the under-mentioned, intend to appear at the hearing of this appeal and I submit the following particulars:

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(1) *(Set out the name, postal address and description of person giving the notice).*

(2) The manner in which I may be interested in or affected by the appeal and the grounds upon which I claim to be entitled to be heard are as follows: *(set out).*

(3) I intend to appear at the hearing *(state whether alone or jointly with some other person or persons, giving the names, addresses and descriptions of those persons).*

\*(4) I wish to be supplied by you free of charge with a copy of the memorandum of appeal and of any relevant notice of intention to appear received or to be received by you from any other person.

(5) The order which I will submit should be made on the appeal is that *(set out desired order)* on the ground that *(set out).*

(6) I intend *(or do not intend)\** to adduce expert evidence as to a question of valuation.

(7) Documents may be served upon me in this matter at *(state an address within Kenya).*

Dated this ..... day of ....., 19.....

.....  
*(Signature of person giving the notice).*

\*Strike out as appropriate.

