



**THE REPUBLIC OF KENYA**

LAWS OF KENYA

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**THE WAQF ACT**

CHAPTER 109

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**CHAPTER 109**

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**CHAPTER 109**

**WAQF ACT**

[Date of assent: 24th February, 2022.]

[Date of commencement: 21st March, 2022.]

**AN ACT of Parliament to provide for the establishment of the *Waqf* Commission; to provide for the administration of *waqf* property and for connected purposes**

[Act No. 8 of 2022.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the *Waqf* Act.

**2. Interpretation**

In this Act, except where the context otherwise requires—

"*alim*" means a Muslim scholar;

"Commission" means the *Waqf* Commission established under section 5;

"Director-General" means the Director-General appointed under section 11(1);

"general administration account" means an account whose funds are used for the general administration and management of the Commission;

"maintenance and reserve account" means an account whose funds are used for preservation and maintenance of *waqf* property;

"Muslim" means a person who professes the Islamic faith;

"surplus account" means the account established under section 24;

"trustee" means a person, whether alone or jointly with another, administering any *waqf* property;

"*waaqif*" means a person who endows his property or cash as the subject of a *waqf*;

"*waqf*" means a religious, charitable or benevolent endowment or dedication of any property in accordance with Islamic law, and "*awqa*" means more than one *waqf*;

"*waqf ahli*" means a *waqf* made for the benefit of an individual or a family, or for the performance of a rite or ceremony that is recognised by Islamic law;

"*waqf khairi*" means a *waqf*, other than a *waqf ahli*, made for a public purpose recognised by Islamic law;

"*waqf mushtaraq*" means a *waqf* which is made in part for the benefit of an individual or a family and in part for a public purpose that is recognised by Islamic law; and

"*zakat*" means payment made annually under Islamic law on certain kinds of property and used for charitable and religious purposes as a third pillar of Islam.

### 3. Application

This Act shall apply to the making and administration of all *awqaf* in Kenya.

### 4. Validity of a *waqf*

(1) A *waqf* shall be valid where—

- (a) it is made in accordance with Islamic law;
- (b) the *waaqif* has attained eighteen years;
- (c) the *waaqif* is of sound mind; and
- (d) it is made for religious purposes for the poor and vulnerable within the Muslim community.

(2) A *waqf* shall not be invalid merely because the benefit of the *waqf* that shall be reserved for the poor or any other purpose shall not take effect until after the extinction of the family of the *waaqif*.

## PART II – WAQF COMMISSION

### 5. Establishment of the *Waqf* Commission

(1) There is established a commission to be known as the *Waqf* Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

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

(3) The seal of the Commission shall be authenticated by the signature of the chairperson, or a member authorised by the Commission to act in that behalf in the absence of the chairperson and the Director-General.

(4) The seal of the Commission, when authenticated under subsection (3), shall be officially and judicially noticed.

(5) All documents, other than those required by law to be under seal, made by, and all decisions of the Commission, may be signed by the chairperson, any commissioner authorised to do so in the absence of the chairperson, or the Director-General.

### 6. Composition of the Commission

The Commission shall consist of the Public Trustee and eight members who shall be appointed by the Attorney-General, on the recommendation of the selection panel appointed under section 7, as follows—

- (a) one *alim* who shall be well-versed in Islamic jurisprudence;
- (b) one person who shall be prominent in business or entrepreneurship;
- (c) six persons who shall be knowledgeable and experienced in—
  - (i) law;
  - (ii) accounting;

- (iii) land economics;
  - (iv) social work;
  - (v) finance and investment;
  - (vi) architecture; or
  - (vii) administration; and
- (d) the Director-General appointed under section 11(1) who shall be an *ex officio* member without the right to vote at the meetings of the Commission.

## 7. Selection panel

(1) The Attorney-General shall, within fourteen days after the occurrence of a vacancy in the Commission, appoint a selection panel for the purpose of nominating suitable candidates for appointment as a member of the Commission under section 6(a), (b) or (c).

(2) The selection panel shall comprise of five eminent Muslims of either gender appointed by the Attorney- General in consultation with key Islamic leaders knowledgeable in *sharia* law and organisations:

Provided that—

- (a) no Kadhi shall be appointed as a member of the selection panel;
- (b) a person having a conflict of interest whether directly in person or indirectly as a family member or a beneficiary or lessee of a *waqf* shall not be appointed as a member of the selection panel;
- (c) no state officer or public officer shall be appointed as a member of the selection panel; and
- (d) the selection panel shall be dissolved on the appointment of the Commissioners.

(3) The selection panel shall—

- (a) invite applications from qualified persons by notice in the *Gazette* and advertisement in at least two newspapers of national circulation;
- (b) prepare a shortlist of qualified applicants;
- (c) conduct interviews of shortlisted applicants to assess their qualifications as specified in section 6 and their compliance with Chapter Six of the Constitution; and
- (d) recommend the names of successful candidates to the Attorney-General for appointment as members of the Commission.

(4) The selection panel shall invite views from Muslims in respect of the shortlisted candidates before making its recommendations to the Attorney-General under paragraph (3)(d).

(5) The selection panel shall ensure that—

- (a) not more than two-thirds of the members of the Commission are of the same gender;
- (b) one member of the Commission shall represent the youth; and
- (c) one member of the Commission shall represent persons with disabilities.

(6) The expenses and liabilities of the selection panel shall be borne by the Government.

(7) Members of the Commission shall hold office for a period of five years and shall be eligible for reappointment for one further term of five years.

(8) The office of a member of the Commission shall become vacant if the holder

- (a) dies;
- (b) is absent from three successive meetings of the Commission without the permission of the chairperson;
- (c) resigns by notice in writing addressed to the Attorney-General; or
- (d) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.

(9) A vacancy in the Commission shall be filled in accordance with the procedure set out in this section.

### **8. Functions of the Commission**

The functions of the Commission shall be to—

- (a) register all *awqaf*;
- (b) administer and manage *waqf* properties registered under this Act;
- (c) supervise the efficient and effective management of all *waqf* properties registered under this Act;
- (d) ensure the effective implementation of the provisions of this Act;
- (e) establish such structures as may be necessary for the effective performance of its functions or exercise of its powers under this Act;
- (f) formulate policies for the performance of its functions;
- (g) collect *zakat* and other charitable contributions from Muslims for the purposes of this Act;
- (h) develop and facilitate adequate continuous training programmes to enhance the standard and effectiveness of trustees;
- (i) formulate, implement and oversee programmes to raise awareness on *waqf* matters; and
- (j) perform such other functions as may be prescribed by this Act or any other written law.

### **9. Chairperson and quorum**

(1) At the first meeting of the Commission in each year, the members shall elect one person from among their number to be the chairperson during the year.

(2) The chairperson shall preside over all meetings of the Commission, and in the absence of the chairperson from any meeting, the members present shall elect one person from those present to preside over the meeting.

(3) The quorum of the Commission shall be five members.

(4) Notwithstanding subsection (3), where quorum is not achieved in two successive meetings, three members of the Commission may hold a meeting.

(5) The members of the Commission shall serve on a part-time basis.

(6) Except as provided under this section the Commission may regulate its own procedure.



**10. Remuneration of members of the Commission**

There shall be paid to the members of the Commission such allowances as the Commission may, in consultation with the Salaries and Remuneration Commission, determine.

**11. The Director-General**

(1) There shall be a Director-General of the Commission who shall be recruited and appointed by the Commission through a competitive process on such terms and conditions as the Commission may in consultation with the Salaries and Remuneration Commission determine.

(2) A person shall be qualified for appointment under subsection (1) if the person—

- (a) is a Muslim;
- (b) is a citizen of Kenya;
- (c) holds a degree from a university recognized in Kenya;
- (d) has at least five years' experience at senior management level in a public institution or a reputable private institution;
- (e) has knowledge and experience in any of the following fields—
  - (i) administration;
  - (ii) accounting;
  - (iii) certified public secretarial work;
  - (iv) law;
  - (v) land economics;
  - (vi) social work;
  - (vii) architecture;
  - (viii) construction management; or
  - (ix) civil engineering; and
- (f) meets the requirements of Chapter Six of the Constitution.

(3) The Director-General shall be the chief executive officer of the Commission and responsible for the day-to-day management of the affairs of the Commission.

(4) The Director-General shall be the accounting officer of the Commission and shall be responsible to the Commission for—

- (a) all income and expenditure of the Commission;
- (b) the assets and the discharge of all liabilities of the Commission; and
- (c) the proper implementation of this Act.

(5) The Director-General shall be the Secretary to the Commission.

**12. Staff of the Commission**

(1) The Commission may appoint such other officers and staff as may be necessary for the proper discharge of its functions under this Act.

(2) The persons appointed under subsection (1) shall serve on such terms and conditions as the Commission may, in consultation with the Salaries and Remuneration Commission, determine.

**13. Removal of a trustee**

(1) A trustee shall be removed from office only by a court on grounds of—

- (a) misappropriation of a *waaqif's* property;
- (b) allowing the *waqf* property to fall into disrepair when the trustee has funds to maintain the property;
- (c) knowingly or intentionally causing damage or loss to *waqf* property;
- (d) breach of trust in relation to the *waqf* property; or
- (e) any other sufficient reason permitted by Islamic law.

(2) Despite subsection (1), a trustee may be removed from office by the *waaqif*, if the right to remove the trustee is reserved in the *waqf* deed.

### PART III – MANAGEMENT OF AWQAF

#### 14. Register of *awqaf*

(1) All *awqaf* shall be registered with the Commission in such manner as the Commission may specify.

(2) The Commission shall establish and maintain a register of registered *awqaf* in such form and containing such particulars as it may determine.

(3) Every trustee of a *waqf* shall, within three months from the date of the establishment of the *waqf*, apply to the Commission for its registration in the prescribed manner.

(4) An application under subsection (3) shall be accompanied by such fees as may be prescribed.

(5) A trustee who fails to comply with the provisions of subsection (3) commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year.

#### 15. Administration of *awqaf* by the Commission

(1) The Commission may, on the application of the trustees of a *waqf khairi* and subject to such conditions as may be imposed by the *waaqif*, take over the administration of such *waqf*, and any property that is the object of the *waqf* shall vest in the Commission.

(2) The Commission may, on the application by the trustees and with the consent of the majority of the beneficiaries of a *waqf ahli* or *waqf mushtaraq* and subject to such conditions as may be imposed by the *waaqif*, take over the administration of such *waqf*, and any property that is the object of the *waqf* shall vest in the Commission.

#### 16. Inquiry by the Commission

(1) Where it appears to the Commission, in respect of any *waqf*, that—

- (a) there is no properly constituted body of trustees; or
- (b) a trustee is acting in an improper or unauthorised manner, the Commission may hold an inquiry into the matter—
  - (i) in the case of a *waqf khairi*, on its own motion; or
  - (ii) in the case of a *waqf ahli*, on the motion of the trustees or a beneficiary or any person who has an interest in the *waqf*, with the consent of the majority of the beneficiaries.

(2) Where an inquiry is commenced by a motion filed by the trustees of a *waqf* a beneficiary or any person who has an interest in the *waqf*, the trustees shall furnish the Commission, within thirty days of the filing of the motion, with the names

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and addresses of the beneficiaries of the *waqf* and any other person who has an interest in the *waqf*.

(3) The Commission shall issue a written notice of an inquiry to all persons having any interest in the *waqf* inviting them to appear and give representations before the Commission.

(4) If after holding an inquiry, the Commission finds either that there is no properly constituted body of trustees or that a trustee is acting in an improper or unauthorised manner, the Commission may make an order—

- (a) declaring that the property that is the subject of the *waqf* shall be administered by the Commission; or
- (b) appointing some other person to be a trustee of the *waqf*.

(5) The Attorney-General may make regulations prescribing the procedure for the holding of inquiries under this section.

#### **17. Production of documents by trustees**

(1) The Commission may, at any time, call upon a trustee of a *waqf* to produce any books or documents in his or her possession or control, including books of accounts, relating to the *waqf* in order to satisfy itself regarding the management of the *waqf*.

(2) A trustee who fails to comply when called upon to do so under subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding one year.

#### **18. Agreements relating to *waqf* property**

(1) An agreement purporting to lease or otherwise alienate *waqf* property for any period exceeding one year shall be valid only if it is authorised in writing by the Commission.

(2) A person who intends to sell immovable *waqf* property shall make an application to the Environment and Land Court and the Environment and Land Court may allow the application or issue any other order it deems appropriate.

(3) A trustee who enters into an agreement contrary to the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year.

#### **19. Title to *waqf* property**

Notwithstanding anything to the contrary in any written law for the time being in force, no title to any *waqf* property shall be acquired by any person by adverse possession or by reason of the law of prescription.

#### **20. Administration of a *Waqf***

(1) *Waqf* property under the control of the Commission shall be administered by the Commission in accordance with the intentions of the *waqif*.

Provided that the intentions of the *waqif* shall only be honoured if they—

- (a) are lawful;
- (b) accord with Islamic law;
- (c) are capable of being carried into effect, and
- (d) are ascertainable by reference to tradition or by reference to any other evidence lawfully obtainable.

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(2) Notwithstanding subsection (1), where in the opinion of the Commission the intentions of the *waaqif* are unlawful or unascertainable or are incapable of being carried out, the Commission may apply the *waqf* property—

- (a) in the case of a *waqf khairi*, for such benevolent or charitable purposes on behalf of Muslims as the Commission may deem proper; or
- (b) in the case of a *waqf ahli*, in such manner as the Commission may deem fit for the benefit of the beneficiaries of the *waqf*.

(3) The Commission shall apply any surplus revenue which remains after fulfilling the intentions of a *waaqif* in the manner set out in paragraphs (2)(a) and (b).

(4) Where the Commission determines that a trustee of a *waqf* is mismanaging *waqf* property, the Commission may conduct an inquiry in accordance with section 16 and may make the following orders against the persons found culpable—

- (a) in the case of *waqf ahli*, an order to return the *waqf* property that has been mismanaged to the family members—
  - (i) if they so desire; and
  - (ii) if they demonstrate a capacity to manage the *waqf* property themselves; or
- (b) that the property be dealt with in accordance with section 16(4).

### **21. Disposal of *waqf* property**

(1) Where, in relation to any *waqf*, the Commission determines that—

- (a) the intentions of the *waaqif* cannot reasonably be carried into effect; and
- (b) it is expedient that the *waqf* property should be sold,

the Commission may cause that property to be sold in accordance with section 18 and shall ensure that the proceeds of the sale are paid into a surplus account;

Provided that nothing in this section shall be deemed to authorise the sale of any land which, under a *waqf*, was intended to be used for a cemetery, burial ground or the construction of a mosque.

(2) The funds in the surplus account shall be utilised by the Commission for such benevolent or charitable purposes for the benefit of Muslims as the Commission may consider appropriate.

### **22. Limitation on the use of *waqf* property by the Commission**

(1) The Commission shall not utilize *waqf* property or any revenue therefrom for any purpose connected with another *waqf* if there still exists *waqf* property or revenue from the latter *waqf*.

(2) Notwithstanding subsection (1), if the Commission determines that a *waqf khairi* is urgently in need of any funds for repairs or for any other purpose, it may, notwithstanding that there exists *waqf* property in that *waqf khairi*, utilize the revenue arising from any other *waqf* property or another *waqf khairi* for that purpose.

(3) Notwithstanding subsection (2), the Commission shall utilize the revenue arising from another *waqf khairi* if it is satisfied that—

- (a) that revenue is not then required in relation to the latter *waqf khairi*; and

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- (b) the amount of the revenue so utilised shall, without prejudice to the purposes of the *waqf* relating to which it is used, be repaid out of the property of that *waqf* within one year from the date of being so utilised.

**23. Maintenance and reserve account**

The Commission shall ensure that, in respect of each *waqf* a sum which in the opinion of the Commission is necessary to maintain and preserve the *waqf* property is paid into a maintenance and reserve account before any payment is made for the purpose of carrying out the intentions of the *waaqif*.

**24. Surplus account**

- (1) If, in respect of any *Waqf*—

- (a) the intentions of the *waaqif*—
- (i) are unlawful or unascertainable; or
  - (ii) are incapable of being carried into effect; or
  - (iii) cannot reasonably be carried into effect; or
- (b) the beneficiaries are unascertainable,

the Commission may sell such property and pay the proceeds of the sale into a surplus account established by the Commission for that purpose.

- (2) The Commission may deal with any funds from the surplus account by—

- (a) depositing them in a *sharia* compliant bank; or
- (b) investing them in such investments and securities as are allowed by Islamic law for the investment of trust funds, and the income derived therefrom shall be utilised in the general administration of the Commission.

## PART IV – FINANCIAL PROVISIONS

**25. Accounts and audit**

The Commission shall keep proper books of accounts of the income, expenditure, assets and liabilities of the Commission, and such accounts shall be audited in accordance with the Public Audit Act (Cap. 412B).

**26. Bank accounts**

(1) The Commission may open and maintain such *sharia*-compliant bank accounts as may be required for the performance of the functions of the Commission.

(2) The bank accounts referred to in subsection (1) shall be operated by the Director-General and any other officer of the Commission authorized in that behalf by the Commission.

**27. Annual Report**

(1) The Commission shall, before the thirtieth of September in each year, prepare an annual report for the immediately preceding financial year and submit it to the Attorney-General before the thirtieth November in that year.

- (2) The annual report shall provide information regarding—

- (a) the activities of the Commission in the previous financial year;
- (b) the status of the *awqaf* under the management of the respective *waqf* trustees;

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- (c) the status of *awqaf* vested in the Commission; and
- (d) the income, expenditure, assets and liabilities of the *awqaf*.

**28. Right to access information**

(1) A beneficiary of a *waqf* shall, at all reasonable times, be entitled to information about the *waqf* including the inspection of accounts and shall upon payment of the prescribed fees be supplied with copies of any deeds or documents thereof.

(2) The information under subsection (1) does not include correspondence and any other confidential information.

**29. Disputes resolution**

Any matter or dispute relating to a *waqf* shall in the first instance be referred to a Kadhis' court.

**30. Exemption from taxation or penalties**

Despite the provisions of any other written law, the income of the Commission shall not be subjected to income tax or any other tax or penalty.

**PART V – MISCELLANEOUS****31. Fees**

(1) The Commission may charge fees—

- (a) at the rate of five per centum per annum of the revenue of the *waqf* property of a *waqf khairi*; or
- (b) ten per centum per annum of the revenue of the *waqf* property of a *waqf ahli*,

for the management of the *awqaf* vested in the Commission.

(2) The fees charged under subsection (1) shall be paid into the general administration account of the Commission and shall be utilised by the Commission

- (a) first in defraying the expenses of the management of the *awqaf*, and
- (b) the surplus shall be used for such charitable purposes as the Commission may determine.

(3) The fees prescribed under subsection (1) may be varied by a resolution for that purpose made by a majority of the members of the Commission present at a meeting of the Commission convened for that purpose and published in the *Gazette*.

**32. Rules**

The Attorney-General may make rules for the better carrying out of the provisions of this Act.

**33.**

[Spent]

**34. Transitional provisions**

(1) A person who, immediately before the commencement of this Act, was appointed the Secretary or a Commissioner of the Wakf Commissioners under the Wakf Commissioners Act (repealed), shall remain in office so as to serve

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the remaining period of such Commissioner's term of office, after which a new Commissioner shall be appointed in accordance with the provisions of this Act.

(2) Any proceedings, instruments or rights of appeal subsisting immediately before the commencement of this Act shall be deemed to be proceedings, instruments or rights under this Act.

(3) All immovable and movable property and assets which immediately before the commencement of this Act were vested in, or in the possession of the Wakf Commissioners under the Wakf Commissioners Act (repealed) shall, by virtue of this section, vest in the Commission without further conveyance, transfer or assignment:

Provided that the Commission shall, within one year after the commencement of this Act, review the terms and conditions of all leases to property entered into by the Wakf Commissioners under the Wakf Commissioners Act (repealed) and subsisting before such commencement.

(4) All rights, obligations and liabilities which immediately before the commencement of this Act were vested in or imposed on the Wakf Commissioners under the Wakf Commissioners Act (repealed) shall be deemed to be the rights, obligations and liabilities of the Commission under this Act.

(5) All references to the Wakf Commissioners appointed under the Wakf Commissioners Act (repealed) in any agreement or instrument relating to any property, assets, rights, obligations or liabilities transferred under subsections (3) or (4) and subsisting immediately before the commencement of this Act, shall, unless the context otherwise requires, be read as references to Commission established under this Act.

(6) Any person who was a member of the staff of the Wakf Commissioners appointed under the Wakf Commissioners Act (repealed), shall be deemed to have been appointed under this Act on the terms and conditions of service applicable to them immediately before the commencement of this Act.

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