

THE LAND (GROUP REPRESENTATIVES) ACT 1968
1968

No. 36 of 1968

Date of Assent: 26th June 1968

Date of Commencement: 28th June 1968

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An Act of Parliament to provide for the incorporation of representatives of groups who have been recorded as owners of land under the Land Adjudication Act 1968, and for purposes connected therewith and purposes incidental thereto

ENACTED by the Parliament of Kenya, as follows:—

PART I—PRELIMINARY

1. This Act may be cited as the Land (Group Representatives) Act 1968.

Short title.

2. In this Act, except where the context otherwise requires—

Interpretation

“adjudication register” means an adjudication register prepared under the Land Adjudication Act 1968;

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“disability” means disability arising from minority or other incapacity;

“group” has the same meaning as in the Land Adjudication Act 1968;

“group representatives” means group representatives incorporated under section 7 of this Act;

“guardian” means a person responsible (whether under recognized customary law or otherwise) for protecting the interests of a person who is under a disability;

“land registrar” means the person responsible for the registration of title to land in the area in question;

“member” in relation to a group excludes a person who is under a disability, but includes the guardian of such a person;

“officer” in relation to a group means the chairman, deputy chairman, secretary or treasurer of the group, or any member of the committee, council or governing body of the group, or any person who holds in the group any office or position analogous to the foregoing, under the constitution or rules of the group, or any person who assists in the management of the group, or any group representative, but does not include a trustee, auditor, adviser or patron who takes no part in the management of the group;

“register” means the register kept under section 4 of this Act;

“the registrar” means the Registrar of Group Representatives appointed under section 3 of this Act, or the Deputy Registrar of Group Representatives or an Assistant Registrar of Group Representatives where he has the authority of the Registrar of Group Representatives to act.

PART II—THE REGISTRAR AND THE REGISTER

Appointment
of registrar
and staff.

3. The Minister shall, by notice in the Gazette, appoint a person who is a public officer to be Registrar of Group Representatives to perform the duties and exercise the powers imposed and conferred on the registrar by this Act, and may appoint a Deputy Registrar of Group Representatives and such number of Assistant Registrars as he considers necessary, who shall all be subject to the directions of the Registrar of Group Representatives.

Duties of
registrar.

4. (1) The registrar shall cause to be kept a register called the register of group representatives, and to be entered in it all the matters required by this Act to be so entered.

(2) The Registrar of Group Representatives shall be responsible for the supervision of the administration of groups which have group representatives.

PART III—INCORPORATION OF GROUP REPRESENTATIVES

Meeting to
elect group
representatives.
35 of 1968.

5. (1) Upon being notified under section 23 (5) (c) of the Land Adjudication Act 1968 that a group has been advised to apply for group representatives to be incorporated under this Act, the registrar shall convene a meeting of the members of the group, at a specified time and place, to—

- (a) adopt a constitution;
- (b) elect not more than ten and not less than three persons to be group representatives of the group; and
- (c) elect persons to be the officers of the group in accordance with the constitution.

(2) The registrar or a public officer appointed by him in writing for the purpose shall preside at the meeting to be held under section 5 of this Act.

Disqualification
for office.

6. (1) No person who has been convicted of a crime involving fraud or dishonesty shall be capable of being appointed or elected to, or of remaining in—

- (a) the office of treasurer, deputy treasurer or assistant treasurer of a group; or

(b) any other office in a group the holder of which is responsible for the collection, disbursement, custody or control of the funds of the group or for its accounts; or

(c) the office of group representative; or

(d) the position of trustee or auditor of a group.

(2) A person shall not be capable of being appointed or elected or of remaining auditor of a group if he is an officer of the group.

7. (1) Where at a meeting held under section 5 of this Act the members of a group resolve that group representatives shall be incorporated, and elect not more than ten and not less than three persons to be group representatives, the persons so elected shall make application to the registrar in the prescribed manner for their incorporation under this Act.

Incorporation
of group
representatives.

(2) On receiving an application under subsection (1) of this section, the registrar, if he is satisfied that—

(a) the requirements of this Act and of any regulations made under it have been complied with; and

(b) the constitution of the group is acceptable in substance and in form,

may issue a certificate of incorporation of the group representatives, subject to any conditions, limitations or exemptions which he considers appropriate.

(3) Upon the issue of the certificate of incorporation, the persons named in it as the group representatives shall thereupon become the group representatives of the group and a body corporate with the name specified in the certificate, and shall have perpetual succession, and the persons elected to be the officers of the group shall become the officers of the group.

(4) Any conditions or limitations in a certificate of incorporation constitute a binding obligation upon the group representatives to observe them, so far as they are applicable to the group representatives.

8. (1) The issue of a certificate of incorporation of group representatives shall, subject to this Act and any regulations made under it and to the conditions, limitations and exemptions in the certificate of incorporation, confer on the group

Powers
of group
representatives.

representatives power to sue and be sued in their corporate name, and to acquire, hold, charge and dispose of property of any kind, and to borrow money with or without giving security.

(2) The group representatives are under a duty to hold any property which they hold as such, and to exercise their powers as such, on behalf and for the collective benefit of all the members of the group, and fully and effectively to consult the other members of the group on such exercise.

Changes in
group
representation.

9. (1) Where a group representative dies, becomes incapable or wishes to retire, he shall be replaced in accordance with the constitution of the group:

Provided that, if no appointment is made within two months of the event occurring, the Minister may in writing replace him with another member of the group if he considers that the exigency of the situation so demands, and if he does so he shall inform the registrar thereof.

(2) A group representative may be replaced by resolution of the group.

(3) Where a group representative dies, or becomes incapable, or is replaced under subsection (1) or subsection (2) of this section, at least three of the officers of the group shall give notice to the registrar within twenty-eight days after the happening, and the registrar shall—

(a) amend the register accordingly;

(b) direct the land registrar to amend his register accordingly; and

(c) inform the Minister thereof in cases where no replacement takes place.

Disputes.

10. (1) If it appears to the registrar that there has been a dispute among the officers or members of a group so that he is not satisfied as to who are the officers of the group, the registrar may in writing require the officers of the group to produce to him evidence of either—

(a) the settlement of the dispute and the proper appointment of officers of the group; or

(b) the institution of proceedings for the settlement of the dispute and for a declaration as to who are the officers of the group,

and where he does so the officers shall provide evidence accordingly within the time specified and it shall be signed by at least three of the officers.

(2) A District Magistrate's Court shall have jurisdiction to settle disputes and make declarations for the purposes of proceedings instituted under subsection (1) (b) of this section.

11. Where a certificate of incorporation has been issued with conditions, limitations or exemptions, the group representatives may apply to the registrar to vary any of the conditions, limitations or exemptions, and the registrar, after calling for such evidence and information as he may require, may in writing vary the conditions, limitations or exemptions in such manner as he considers appropriate if he thinks fit, and the variation shall take effect from the time it is made.

Variation of certificate of incorporation.

12. A group may adopt rules regulating matters not regulated by the constitution and matters relating to the procedure of the group and its officers and the administration of its property and affairs.

Adoption of rules.

13. (1) Group representatives may apply to the registrar for his consent for—

Amendment and dissolution.

(a) the amendment of the name, constitution or rules of the group;

(b) the dissolution of the incorporated group representatives.

(2) An application under subsection (1) of this section shall be in writing and shall be signed by a majority of the group representatives and shall be supported by a copy of the minutes of the meeting at which the resolution to make the amendment or effect the dissolution was passed, and the application shall be delivered to the registrar within fourteen days after the day on which the resolution was passed.

(3) If consent is given, the name, constitution or rules shall stand amended accordingly, or the incorporated group representatives shall stand dissolved, as the case may be, either thereupon or at a future date specified by the Registrar.

(4) The registrar shall give to the land registrar such directions as are necessary to reflect the amendment or dissolution in the land register.

PART IV—ADMINISTRATION OF GROUPS

14. This Part applies to groups having group representatives.

Application of Part.

Meetings.

15. (1) The registrar may convene a meeting of a group at any time.

(2) An annual general meeting of a group shall be held every year in the month prescribed for the annual general meeting in the group's constitution.

(3) If—

(a) the group representatives; or

(b) a number of members of a group who together own assets registered in the group's register whose value exceeds one-half of the value of the assets registered in respect of all the group's members; or

(c) the District Agricultural Committee, so request the chairman (or in his absence the vice-chairman) shall convene a meeting of the group within twenty-one days after the date of the request.

(4) The registrar or a public officer appointed by him in writing for the purpose may attend any meeting of a group and speak at it, but may not vote.

(5) All members of a group shall be entitled to attend a meeting of the group and to vote.

(6) No business shall be transacted at a meeting of a group unless at least sixty per cent of the members of the group are present at the meeting.

(7) A resolution at a meeting of a group supported by the votes of not less than sixty per cent of the members of the group present at the meeting shall be treated as the decision of the group.

Office and postal address.

16. (1) Every group shall have an office and a postal address, and the group representatives shall notify them to the registrar when they apply for incorporation.

(2) All communications and notices required or authorized to be sent under or for the purposes of this Act or any regulations made under it may be sent by post addressed to the postal address of the group representatives.

(3) Notice of any change in the situation of the office or of the postal address shall be given to the registrar within fourteen days of the change, and the notice shall be signed by not less than three of the officers of the group.

Register of members.

17. (1) Every group shall maintain a register of its members (including those under disability) in such form as the registrar may require or as may be prescribed, containing

the name of each member, the date he became a member, his qualifications for membership and, on his ceasing to be a member, the date on which and the circumstances in which he ceases to be a member, and in the case of a member under a disability the name of his guardian, the nature of his disability and (if he is a minor) his age.

(2) If subsection (1) of this section is contravened, each officer of the group shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding one year or to both such fine and such imprisonment, except in a case where the officer satisfies the court that he exercised due diligence to prevent the contravention and that the contravention occurred by reason of matters beyond his control.

18. Every group shall keep one or more books of account, containing details of all moneys received and payments made by and on behalf of the group, and if it fails to do so each of the officers shall be guilty of an offence and liable to a fine not exceeding one thousand shillings, unless he shows that he had no reason to believe that such a failure was likely and that he reasonably believed that a competent and reliable person was charged with the duty of ensuring compliance with this section.

Books of
account.

19. (1) Subject to the constitution or rules of the group, the treasurer, and every other officer of a group who is responsible for the accounts of the group or for the collection, disbursement, custody or control of its property, shall—

Accounts.

(a) at least once in every year at the time specified in the group's constitution or rules; and

(b) at any other times when he is required to do so by resolution of the members of the group or by the rules thereof; and

(c) upon vacating office,

render to the group and its members a full and true account of all moneys received and paid by him since he assumed office or, if he has previously rendered an account, since he had rendered an account, and of the moneys remaining in his hand at the time of rendering the account, and of all bonds, securities and other property of the group in his custody or under his control.

(2) After rendering an account under subsection (1) of this section, the treasurer or other officer shall, if he is required to do so or if he is vacating office, forthwith hand over to

the succeeding treasurer or officer, as the case may be, such moneys as appear to be due from him, and all bonds, securities, effects, books, papers and other property of the group in his custody or otherwise under his control.

(3) Any person who contravenes subsection (1) or subsection (2) of this section shall be guilty of an offence.

Books of account to be open for inspection.

20. (1) Every group shall make its books of accounts and all documents relating thereto, and a list of the members of the group, available—

- (a) for inspection by an officer or member of the group at such place and at such times as may be provided for in the constitution or rules of the group; and
- (b) for inspection by the registrar, or by a person authorized by him in writing, at the office of the registrar at any reasonable time specified by him, if the registrar so requires in writing.

(2) If subsection (1) of this section is contravened each officer of the group shall be guilty of an offence, except in a case where the officer satisfies the court that he exercised due diligence to prevent the contravention and that the contravention occurred by reason of matters beyond his control.

(3) Any person who obstructs the registrar or any such authorized person in the carrying out of an inspection under subsection (1) of this section shall be guilty of an offence.

Acting as officer.

21. Any person who acts as or represents himself to be an officer of a group when he is not an officer of that group shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

PART V—GENERAL

Presumptions.

22. For the purposes of any prosecution, proceedings or investigation under this Act—

- (a) the person named in the register as the holder of an office shall be presumed to be the holder of that office, until the contrary is proved;
- (b) where any books, accounts, writings, lists of members or other documents purporting to relate to a group are found in the possession of any person, it shall be presumed, until the contrary is proved, that that person is a member of that group, and it shall also

be presumed, until the contrary is proved, that that person assisted in the management of that group; and

- (c) notwithstanding the dissolution or purported dissolution of a group, the persons who immediately before the dissolution or purported dissolution were officers of the group shall be deemed to continue in office until after completion of the prosecution, proceedings or investigation.

23. (1) Whenever a charge is created over all or any of the moveable property of a group, the officer of that group, who performs the functions of treasurer shall forthwith inform the registrar thereof, who shall record particulars thereof in the register.

Provision of information.

(2) Where the registrar has reasonable cause to believe that circumstances have arisen which render it expedient for the proper performance of his functions under this Act, or that it is in the public interest so to do, he may in writing, require any officer of a group to cause to be furnished to him—

- (a) a true and complete copy of its constitution or rules or both;
- (b) a true and complete list of its group representatives and other officers;
- (c) a true and complete list of its members;
- (d) a true and complete copy of the minutes of any meeting held by the group;
- (e) a true and complete return of the number of meetings held by the group within the period of twelve months immediately preceding the date of the requirement, and of the places at which the meetings were held;
- (f) accounts of the group covering such period as he deems necessary for the purpose for which the requirement is made, duly audited at the expense of the group;
- (g) such other accounts, returns and other information as may be prescribed,

verified by the signatures of the chairman or vice-chairman and one other officer of the group.

(3) A requirement made under subsection (2) of this section shall require the group to comply with it within the period to be specified in such order:

Provided that the registrar may, on application made to him, extend the period.

(4) The registrar may cause the accounts of a group to be audited, and may recover the cost of so doing out of the funds of the group.

(5) Where any document or information required by subsection (1) or under subsection (2) of this section to be furnished is not duly furnished, or is duly furnished but is false or incomplete in a material particular, each officer of the group shall be guilty of an offence and liable to a fine not exceeding five thousand shillings, or where false information is furnished to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, except in a case where the officer satisfies the court that he exercised due diligence to secure compliance with the requirement and that the non-compliance occurred by reason of matters beyond his control.

Proof of documents.

24. (1) In any legal proceedings, a paper purporting to be a copy of or an extract from any register or document kept by the registrar, and purporting to be certified by the registrar as a true copy or extract, shall be admissible as *prima facie* evidence of the contents of the register or document.

(2) No process for compelling the production of the register or any document kept by the registrar shall issue from any court except with the leave of that court, and any such process which is so issued shall bear a statement that it is issued with the leave of the court.

(3) The registrar shall not, in any legal proceedings to which he is not a party, be compellable—

(a) to produce any document the contents of which can be proved under subsection (1) of this section; or

(b) to appear as a witness to prove the matters, transactions or accounts recorded in any such document,

unless the court for special cause so orders.

Inspection of register.

25. Any person may inspect at the office of the registrar the register and any documents relating to any group lodged with the registrar under this Act, and may obtain from the registrar a copy of or an extract from such register or document.

26. Every notice, requirement or other document issued under this Act or under any constitution or rule made thereunder shall be validly served—

Service of documents.

(a) on a group, if it is sent by registered post addressed to it at its registered postal address; or

(b) on an individual, if it is served on him personally or is sent by registered post addressed to him at the registered postal address of the group with which he is concerned.

27. Subject to any instructions which the Minister may give to him in writing, the registrar may, by writing signed by him, exempt any particular group from all or any of the provisions of this Act or of any constitution or rules made thereunder, subject to such conditions, if any, as he considers appropriate, and may at any time in the same way cancel any such exemption or vary its conditions.

Power of exemption.

28. Where a question arises whether a particular person is a member of a group, a certificate signed by a majority of the group representatives shall be conclusive of the question:

Determination of membership of group.

Provided that a person who is aggrieved by the issue of such a certificate may apply to a District Magistrate's Court having jurisdiction in the area to determine the question, and in such a case the determination of the court shall be conclusive.

29. Any person who is guilty of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

General penalty.

30. The court imposing a fine for an offence under this Act may direct that the whole or any part of it shall be applied in or towards rewarding the person on whose information or at whose suit fine is recovered.

Application of fine.

31. (1) The Minister may make regulations generally for giving effect to the purposes and provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1) of this section, the Minister may make regulations for any of the following purposes—

(a) prescribing provisions which must be contained in the the constitution or rules of a group;

- (b) prescribing provisions which are deemed to be part of the constitution or rules of a group;
- (c) prescribing provisions which, in the absence of other provision in the constitution or rules of a group, are to be taken as part of the constitution or rules, as the case may be;
- (d) ensuring that the registrar is furnished with such information relating to the conduct and affairs of groups as he requires for the performance of his functions;
- (e) prescribing the fees to be paid for any thing done under this Act.

Amendment
of Act 34
of 1967.

32. Section 9 (1) (c) of the Land Control Act 1967 is amended by adding the word "or" at the end of subparagraph (ii) thereof, and by inserting thereafter—

- (iii) group representatives incorporated under the Land (Group Representatives) Act 1968.

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