

# THE COURT BROKERS ACT, 1981

## No. 1 of 1981

*Date of Assent: 30th April, 1981*

*Date of Commencement: By Notice*

### ARRANGEMENT OF SECTIONS

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**An Act of Parliament to provide for the control of court brokers and for purposes incidental thereto and connected therewith**

ENACTED by the Parliament of Kenya as follows:—

Short title and commencement.

1. This Act may be cited as the Court Brokers Act, 1981, and shall come into force on such date as the Minister may appoint.

Interpretation.

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

“Board” means the Court Brokers Licensing Board established under section 4;

Cap. 293.

“court broker” means a person who carries out, or who purports to carry out, the functions of attachment and sale of property under an order of a court, but does not include a bailiff certified under the Distress for Rent Act;

“licence” means a licence in force under this Act;

“place of business” means each separate building and each separate part of a building at which the business of a court broker is carried on;

“Registrar” means the Registrar of the High Court.

Prohibition against unlicensed court brokers.

3. (1) Subject to subsection (2), a person who acts as, or who holds himself out as acting as, a court broker without being licensed under this Act shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months.

(2) A court may, for exceptional reasons to be recorded by it in writing, issue a warrant of attachment and sale to a person other than a corporate body who is not a licensee but who it is satisfied is able properly to execute the warrant.

Court Brokers Licensing Board.

4. (1) There is hereby constituted the Court Brokers Licensing Board.

(2) The Board shall consist of the following persons appointed by the Chief Justice—

- (a) a resident magistrate, senior resident magistrate, or chief magistrate, who shall be the chairman;
- (b) an advocate of the High Court of not less than five years standing who shall, in the absence of the chairman, act as a chairman;
- (c) a person who has acted as a court broker for a period of five years immediately preceding his appointment;
- (d) four other members.

(3) A member of the Board shall be appointed for three years but may resign his office by written notice to the Chief Justice.

5. (1) Meetings of the Board shall be held at least once in each quarter and at any other times appointed by the chairman.

Meetings of  
the Board.

(2) A quorum of the Board shall be five.

(3) The chairman shall have a deliberative and a casting vote.

(4) Subject to this section the Board may regulate its own procedure.

6. The functions of the Board shall be—

Functions of  
the Board.

- (a) to consider applications for licences and applications to renew or amend licences;
- (b) to monitor the activities of court brokers;
- (c) to receive and investigate complaints against court brokers;
- (d) to conduct disciplinary proceedings against court brokers;
- (e) to grant, renew, revoke and suspend licences.

7. All moneys received by the Board pursuant to this Act shall be paid into the Consolidated Fund.

Revenue.

8. (1) A person who has attained the age of twenty-one years and is a Kenya citizen shall be eligible to hold a licence under this Act.

Eligibility for  
licence.

(2) Notwithstanding subsection (1), a person shall not be eligible to hold a licence under this Act if—

- (a) (i) he has been convicted in the ten years preceding his application of an offence involving fraud, dishonesty or immorality and sentenced therefor to a term of imprisonment;
- (ii) he has at any time been convicted of an offence under this Act;
- (b) he is a judge or magistrate or is employed in any capacity as an executive or subordinate officer of a court;
- (c) he is a practising advocate.

(3) A person who obtains a licence knowing that he is not eligible to hold one shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings.

Application for  
grant of  
licence.

**9.** (1) Application for a licence shall be made to the Board and shall identify the place of business in respect of which the licence is requested.

(2) A person who knowingly makes a false statement in connexion with an application for the grant, renewal or amendment of a licence shall be guilty of an offence.

Conditions  
applicable  
to grant of  
licence.

**10.** (1) The Board shall not grant a licence unless it is satisfied that the applicant is eligible to hold a licence and that he is a fit and proper person.

(2) For the purpose of satisfying itself as to the eligibility and suitability of an applicant, the Board may make any necessary enquiries and in pursuance thereof may serve a notice in writing on the applicant requiring him to furnish to the Board within a period specified in the notice any information that the Board may reasonably require.

Refusal to  
grant licence.

**11.** Where the Board refuses to grant a licence it shall serve a notice of refusal, indicating the reasons therefor, on the applicant by registered post or by delivering it to the applicant personally.

Form of  
licence.

**12.** (1) A licence shall be in the form to be determined by the Board and shall include—

- (a) the full names and identity card number of the person to whom the licence is granted;

- (b) the place of business in respect of which the licence is granted;
- (c) the district or districts to which the licence applies; and
- (d) the date of its expiry.

(2) The licence shall be displayed in a conspicuous position within the place of business in respect of which it is granted.

**13.** If the Board is satisfied that a licence has been lost, destroyed or mutilated, it may, on payment of the prescribed fee, issue a duplicate licence.

Duplicate licence.

**14.** (1) A licensee may, not earlier than three months, nor later than one month, before the date of expiry of his licence, apply to the Board for a renewal thereof.

Renewal of licence.

(2) Where an application for the renewal of a licence is made, the licence shall remain in force until the application is dealt with unless the licence is suspended or revoked under the provisions of this Act.

(3) The Board may refuse to renew a licence upon any of the grounds upon which it may refuse to grant a licence or revoke a licence under section 10 or 17 and the provisions of subsection (4) of section 17 shall apply to any refusal to renew.

**15.** Where the Board is satisfied as to the eligibility and suitability of an applicant it shall grant or renew a licence on payment of the prescribed fee.

Fee.

**16.** Subject to the provisions of this Act—

Duration of licence.

- (a) a licence shall be valid for a period of two years from the date of issue;
- (b) where the licence is renewed it shall be valid for a period of two years from the date of expiry of the previous licence;
- (c) where a licence is suspended by the Board under this Act and the suspension is set aside, the licence shall continue to be valid for the period remaining unexpired thereon at the time the suspension took effect.

Revocation  
of licence.

**17. (1)** The Board may revoke a licence if it is satisfied that the licensee made a statement in or in connection with his application for the grant, amendment or renewal of that licence which he knew to be false or misleading in any material particular or which he did not believe to be true.

(2) The Board shall revoke a licence upon the happening of any event which renders the licensee ineligible to hold a licence.

Cap. 64.

(3) The provisions of section 9 of the Probation of Offenders Act shall not apply to this section.

(4) Where the Board has power to revoke a licence it shall give the licensee sufficient opportunity to show cause why the licence should not be revoked.

(5) Where the Board revokes a licence, it shall serve a notice of revocation, indicating the reasons therefor, on the licensee personally or by registered post and shall publish the notice in the Gazette.

(6) The revocation of the licence shall have effect from the date of service of the notice of revocation which shall be—

(a) where the notice is sent by registered post, a date four days after the date of posting; or

(b) where the notice is delivered to the holder of the licence personally, the date of delivery.

(7) Where a licence is revoked, the licensee shall forthwith deliver the licence to the Board and a licensee who, without reasonable excuse, the burden of proving which shall lie on him, fails to do so shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings.

Suspension  
of licence.

**18. (1)** The Board may suspend a licence for a period not exceeding one year—

(a) if the licensee is charged with an offence involving fraud, dishonesty or immorality;

(b) if, having received a complaint against the licensee concerning his activities as a court broker, the Board considers it appropriate to suspend the licence pending further investigation of the complaint.

(2) Where the Board suspends a licence it shall serve a notice of suspension, indicating the reasons therefor, upon the licensee personally or by registered post and shall publish the notice in the Gazette.

(3) The suspension shall take effect on the day following the date of service of the notice of suspension which shall be—

- (a) where the notice is sent by registered post, a date four days after the date of posting; or
- (b) where the notice is delivered to the licensee personally, the date of delivery.

19. (1) A licensee whose licence is suspended may, within twenty-one days after the date of service of the notice of suspension, apply to the Board to set aside the suspension.

Application to set aside suspension.

(2) The application shall be in writing and shall state the grounds relied upon.

(3) After considering the application the Board may set aside, or reduce the period of, the suspension or dismiss the application.

(4) Notice of the decision of the Board, indicating the reasons therefor, shall be served upon the licensee in the same manner as a notice of suspension and the notice shall be published in the Gazette.

(5) The period of suspension shall expire on whichever is the earlier of—

- (a) the date upon which the suspension is set aside; or
- (b) the date upon which revocation of the licence has effect; or
- (c) the date fixed by the Board under section 18 or subsection (3) of this section; or
- (d) the date that the licence ceases to be valid by virtue of the provisions of section 16.

20. (1) A licence shall not be transferable.

Licences not transferable.

(2) Upon the death, bankruptcy or other incapacity of a licensee, his personal representative, trustee in bankruptcy or other person acting on his behalf shall return his licence to the Board and shall also return all warrants, whether executed or unexecuted, to the court which sent them to the licensee.

21. A licence may be amended, on application to the Board and after payment of the prescribed fee—

Amendment of licence.

- (a) by substituting one place of business for another; or

(b) by adding or deleting in the licence a district in which the holder is licensed to act; or

(c) in any other manner that the Board may think fit.

Register of licences.

**22.** (1) The Registrar shall keep a register, in a form that he determines, of licences granted and shall record therein in respect of each licence—

(a) the particulars required by section 12;

(b) particulars of any amendment of the licence made under section 21;

(c) particulars of any revocation or suspension of the licence under section 17 or 18;

(d) the district or districts to which the licence applies;

(e) any other particulars the Board may require to be recorded.

(2) A person may, during reasonable office hours, and on payment of the prescribed fee, inspect the register of licences.

(3) A person who is—

(a) a member of the police force, or a public officer, acting in the course of his duty; and

(b) a person authorized in writing by the Registrar;

may inspect the register without payment.

Penalty.

**23.** (1) A person who commits an offence under this Act or any rules made thereunder for which no penalty is expressly provided shall be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year.

(2) A court broker may be liable, notwithstanding the fact that he has been acquitted of an offence, to disciplinary proceedings under this Act.

Power to make rules.

**24.** The Chief Justice may make rules for the better implementation of the purposes of this Act and in particular providing for—

(a) the manner of issue, revocation and suspension of licences for court brokers;



- (b) the duties of court brokers when attaching, storing and selling property in execution of a decree;
- (c) the fees payable to court brokers;
- (d) the keeping by court brokers of accounts.

25. The Civil Procedure Act is amended by repealing section 44 and substituting the following—

Property liable to attachment and sale in execution of a decree.

44. (1) All property belonging to a judgment debtor, including property over which or over the profits of which he has a disposing power which he may exercise for his own benefit, whether that property is held in his name or in the name of another but on his behalf, shall be liable to attachment and sale in execution of a decree:

Repeal and replacement of section 44 of Cap. 21.

Provided that the following shall not be liable to attachment or sale—

- (i) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment debtor and of his wife and children, and those personal ornaments from which, in accordance with religious usage, a woman cannot be parted;
- (ii) the tools and implements of a person necessary for the performance by him of his trade or profession;
- (iii) where the judgement debtor is an agriculturalist—
  - (a) the first ten thousand shillings in value of his livestock, if any; and
  - (b) the first five thousand shillings in value of all implements, tools, utensils, plant and machinery used in connection with stock or dairy farming or in the production of crops or plants; and
  - (c) the first one thousand shillings in value of agricultural produce necessary to enable him to earn his livelihood;
- (iv) books of accounts;
- (v) a right to sue in damages;
- (vi) a right of personal service;

- (vii) stipends and gratuities allowed to pensioners of the Government, or payable out of a service family pension fund notified in the Gazette by the Minister, and political pensions;
- (viii) two thirds of the salary of a public officer or other person in employment;
- (ix) a contingent or possible right or interest, including an expectancy of succession by survivorship;
- (x) a right of future maintenance;
- (xi) any fund or allowance declared by law to be exempt from attachment and sale in execution of a decree.

(2) Nothing in this section shall affect the provisions of the Armed Forces Act or of any similar law for the time being in force.

Cap. 199.

Repeal of section 7 of Cap. 527.

Saving.

**26.** The Brokers Act is amended by repealing section 7 thereof.

**27.** Notwithstanding anything in this Act, a person who immediately before the date of commencement of this Act was authorized to act as a court broker and who is not ineligible by virtue of section 8 (2) shall be entitled to act as a court broker in accordance with that authorization without a licence under this Act—

- (a) for the period of two months beginning with that date; and
- (b) if before the expiration of that period he applies for a licence under this Act, until the licence is granted or refused or the application is withdrawn.