

Amendments to Kenya's Land Laws : Some Highlights

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At the end of August, President Kenyatta assented and brought into life the Land Laws (Amendment) Act which amends the Land, the Land Registration and the National Land Commission Acts. Some provisions in the new law need to be carefully noted.

Eviction of trespassers

An amendment to the Land Act for instance regulates the eviction of unlawful occupiers, call them trespassers, of private, community or public land. I am sure you must wonder how. While the new provision prohibits the unlawful occupation of all categories of land, it proceeds to prescribe procedures to evict such persons in the event. If a person unlawfully occupies your private land without consent, you can only evict after serving them a notice, in writing and in one of the official languages, of not less than three months. The notice must specify any terms and conditions of removing any buildings or crops and should also be served on the deputy county commissioner and the officer commanding the police division of the affected area. The law further provides that if this involves a big group of persons, the notice must be published in at least two newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land. Furthermore, the affected persons, on receiving the notice, may apply to court for relief against the notice. Where eviction is allowed, the law prescribes an elaborate guiding procedure specifying, among others, authorization, those to be involved, and the protection of property and lives during the exercise. The procedure applies to registered community land too.

In the event of unlawful occupation of unregistered community land, the County Executive Committee Member responsible for land in a county shall drive the issuance of an eviction

notice in the Gazette and in one newspaper with nationwide circulation, and on radio, in a local language where appropriate, at least three months before the eviction. Where the trespass is on public land, a similar procedure shall be driven by the National Land Commission. In both instances, the affected persons have the discretion to seek recourse in court and, where eviction must proceed, the elaborate procedure above applies.

Luckily, for these provisions to take effect, the Cabinet Secretary responsible for land shall have to prescribe regulations. Given the sensitivity of this matter to property holders, one hopes that the Cabinet Secretary will allow sufficient time for discussion of the applicable regulations! Whereas there's been concern about violent evictions in this country, not well applied, the new provisions can be abused. It's easy to for instance anticipate situations where trespassers may use the new provisions to take aggrieved landowners through protracted court processes, hence undermining their ability to use or transact on the affected land. Let's therefore beware trespassers!

Renewal of leases: Loopholes sealed

On a brighter side, the amendments provide lease holders to land derived from public land with reason to smile. It'll now be difficult for speculators within and outside government to influence the determination of leases without full and demonstrable reference to the owners as used to happen to some people particularly in Nairobi City. An amendment to section thirteen of the Land Act states that a Kenyan citizen holding a lease enjoys pre-emptive rights of extension of the same unless the land is needed by the county or national government. The amendment obliges the Land Commission to notify the lease holder by registered mail of the imminent expiry five years ahead. If the lessee does not respond seeking an extension, then within the last one year, the Commission is bound to publish the imminent expiry in one newspaper of national circulation. This will increase the possibility of the lessee, family and friends getting to know and acting accordingly.

Where the application for extension is to be denied, the Commission will be required to issue an explanation in writing. I want to believe that the lessee will have discretion to challenge the non-extension in the Environment and Land Court which relates to such matters. This amendment is godsend as it seals a loophole that's been exploited or abused to unfairly determine land leases, or solicit unwarranted informal rent, before leases are extended. The abolished office of the Commissioner of Lands had wide discretion over the matter. Many, particularly when in bad books at high level or, in cases where the lessee had passed on and beneficiaries didn't know about the imminent expiry, lost prime properties in most unjustifiable circumstances.

Banks happy

Banks will be happy too. With the amendments, those who held titles issued under the repealed Government Lands and Land Titles Acts can now rest easy. Banks can now deal with such documents in total confidence. These titles are now expressly recognized as valid following amendments to section 105 of the Land Registration Act. There won't be need for their pre-examination before admission to the register as earlier required.

Historical Injustices

An amendment to the National Land Commission Act provides for the National Land Commission to receive, admit and investigate all historical land injustices in compliance with the constitution. The amendment details grievances that will constitute historical injustices, provides that these must have occurred between 15th June 1895 when Kenya became a British East African Protectorate and the promulgation of our new constitution on 27th

August 2010. The provision also prescribes criteria for admission of grievances, the applicable limitation period and the range of remedies available to complainants. Some of the remedies the Commission may recommend include restitution, compensation, resettlement on alternative land and rehabilitation through provision of social infrastructure.

It was anticipated that historical injustices would be addressed through standalone legislation given that a lot of background work had been done that effect. But now that this has been condensed and shaped into an amendment of the National Land Commission Act, complaints will now be handled as provided and the National Land commission will investigate admissible grievances and make recommendations for remedy and action by various authorities as provided.

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