

## HISTORY OF VARIOUS STATUTES OF LAND LAW IN KENYA

### STATUTES REPEALED IN 2012

a) **The GLA previously Crown Land Ordinance enacted in 1915.**

The Act recognized the right to transfer interest in land but only with the consent of the Commissioner of Lands. The importance of this Act is that this Act is the beginning of alienation of land, i.e. when someone receives a letter of allotment from the Commissioner of Lands. This Act was used to alienate government land where by it gave so much power to the President through the Commissioner of Lands which led to its abuse and unsustainability.

b) **LTA Cap 282**

The LTA was enacted in 1908 and to make provisions of any doubt in regard to titles. It only applies to land in the Coast Province and is not an Act of general application. The act was established to adjudicate land claims ones acknowledged. The recorder of titles could issue certificates of title. The only registry (that deals with this Act) is located in Mombasa.

c) **RTA Cap 281 enacted in 1920**

This Act recognizes the title is the primary evidence of ownership of land. The transaction is simplified and there is a government guarantee under the RTA. Land which was previously registered under GLA after alienation from the government was registered under the RTA. This is the main registration Act. In Section 23 it provides that a title is conclusive evidence of ownership and therefore transacting is easy because a search gives the record of ownership.

d) **RLA enacted in 1963**

Applies mostly to agricultural land and land that was registred when the government was embarking on adjudication and consolidation. An RLA Title is a piece of paper that has 3 sections. One has to conduct a search in the registry; most of the District Land Registries will have the records and it is easy to locate where the land is from the registration of the title. One has to go to the root of the title because the title is not conclusive evidence of ownership.

### STATUTES IN FORCE AFTER THE REPEALS IN 2012

e) **ITPA - Indian Transfer of Property Act of 1882**

It's a statute of General application, Article 11b applied the ITPA to provide for substantive law of land in Kenya - Provides substantive law governing all transaction

in land except those registered under the RLA. A lot of land is registered under this Act.

**f) Land Control Act Cap 302**

Its importance is in dealing with agricultural land, Land Control Boards have been established to give consent for alienation of agricultural land. It affects ALL transactions dealing only on agricultural land

**g) Sectional Properties Act No 21 of 1987**

Also known as condominium property, it is applicable under the RLA. The main purpose is to governance issuance of titles for tenement blocks/apartments and flats. The substantive law and issuance of title are very new to advocates and land offices. They look like RLA Titles but are Sectional Properties Act. Sections of Plans have to be registered showing the delineation of the flats and blocks.

**h) Stamp Duty Act**

Impacts on conveyance as all instruments referred to in the schedule are required to be stamped/franked. Section 6 stamped during 30 days of execution. This is government tax payable to collector of Domestic Taxes. The importance of stamping is that there cannot be transfer unless the document has been stamped to the correct value.

**i) Land Groups Representatives Act Cap 287**

This is an Act that provides for the Registrar of Group Representatives. The registrar is also the custodian of the Group Representatives registry. This Act facilitates the adjudication of group parcels of land together with the Land Adjudication Act.

**LAND REGISTRIES**

This is a place of business where one takes the documents for registration and confirmations of ownership and/or particulars in the register. The location of the District Registry one will be dealing with is very important.

**REGISTRIES: SUMMARY**

**RDA** - Registry of Documents in Nairobi and Mombasa

**LTA** - Land Titles Registry in Mombasa Only

**GLA** - Government Lands Registry in Nairobi and Mombasa

**RTA** - Land Titles Registry in Nairobi and Mombasa

**RLA** - District Land Registry in every District

## **RDA Cap 285**

In 1901, the Registration of Documents Act was enacted. It dictated that (Section 4) any document transferring an interest in land had to be registered within one month of transferring it. It did not grant any title to land and no forms were prescribed. One can register practically any document Kenya. Section 4 the documents must be registered within one month. When registering Leases one has to register the floor plans. There is no transfer of title. This system is not much used today but is mainly used for Leases, Licences, Deed Polls, Deed Plans and Wills, Powers of Attorney, agreements.

## **GLA - Government Lands Registry in Nairobi and Mombasa**

This is registration under the Deed system which though it has fallen into disuse has not completely been eliminated. It is still alive but the most important system of registration is registration of titles under the RTA and RLA. Under the registration of Deed system also happens where the recorder of titles can register a document, the GLA and the LTA encompass both the registration of a document as evidence that a transaction has happened and they can register a title.

## **RTA**

Land Titles Registry in Nairobi and Mombasa Where titles are written I.R this is for upcountry registries C.R. is for Coast Registry. When one has a title, any transaction (eg charge, mortgage, charge, transfer etc) concerning that title has to be registered.

## **LAND CONTROL ACT (CAP 302) (LAND CONTROL BOARD CONSENT)**

The purpose of the Land Control Act is to control transactions in agricultural land. Land Control Areas and Land Control Boards have therefore been set up under the Act for this purpose.

S.2 defines "Agricultural land." It means:

- a) Land that is not within
  - ✓ a municipality or township
  - ✓ an area which was a township under the Township Ordinance (now repealed)
  - ✓ an area which was a trading centre under the Trading Centres Ordinance (now repealed)
  - ✓ a market
  
- b) Land in the Nairobi area or in any municipality, township or urban centre that is declared by the Minister by notice in the Gazette, to be agricultural land for purposes of this Act. Under the proviso to S.2, the definition of agricultural land excludes land which, by reason of any condition or covenant in the title thereto or any limitation imposed by law, is subject to the restriction that it may not be used for agriculture or to the requirement that it shall be used for a non-agricultural purpose.

S.6 (1) lists transactions which require LCB consent. Failure to obtain LCB consent renders that transaction null and void. *See: Mbuthia Charagu v. Kiarie Kaguru Civil Appeal No. 87 of 1986.*

Sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing in any agricultural land situated within a land control area;

- Division of agricultural land into two or more parcels to be held under separate titles;
- Issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-operative society which owns agricultural land.

Under S.6 (2), the declaration of a trust of agricultural land situated within a land control area also requires LCB consent. **Under S.6 (3), LCB** consent is not required in respect of the following transactions:

- ✓ Transmissions of agricultural land (whether by testate or instate succession) unless that transmission would result in the division of the land into two or more parcels to be held under separate titles;
- ✓ Transactions to which the Government is a party or transactions which involve trust land. Government can only be a party through the relevant local authority.

**S.8** states the procedure for obtaining L.C.B consent. Applications are to be made to the L.C.B. through the appropriate lands office, using prescribed forms (**See Form 1 of the Schedule**). Form 2 of the Schedule contains the format of the Letter of Consent. The forms are obtainable from the Ministry of Lands or the District Land Registries. If an applicant is dissatisfied with the decision of the L.C.B. refusing consent, an appeal lies to the Provincial Land Control Appeals Board from which a higher appeal lies to the Central Land Control Appeals Board. Under S. 13 (2) the decision of the Central Land Control Appeals Board shall be final and shall not be questioned in any court

S.9 (1) (b) -Lists situations in which Land Control Board consent ought generally to be refused. From these situations, the following objectives of the Land Control Act can be identified:

- To ensure that agricultural land is acquired by persons who can farm the land properly. (Therefore the farming experience of the purchaser is important. However, this is so in theory only.)
- To ensure that agricultural land is equitably distributed among persons who can farm it. (Therefore it is necessary to know how much agricultural land a person already has. Again, this is true in theory only.)
- To ensure that land is not acquired for speculative purposes.

Under S.9 (1) (c), where the person intending to acquire the land is a non-citizen, consent shall not be given. However, under S.24, the President has power to exempt any

transaction or person from the provisions of the Land Control Act. Such exemption is granted by way of notice in the Gazette.

## INTRODUCTION TO CONVEYANCING TRANSACTIONS INVOLVING LAND AND THE LAW OF CONTRACT

### Basic Fundamentals of Conveyancing

Requirement of writing for all documents purporting to convey an interest in land or disposition- Interests are Sale, purchase lease, license, charge, mortgage all these interests there **Section 3(3) of the Law of Contract Act. No suit shall be brought upon a contract for the disposition of an interest in land unless it is in some agreement, note or memorandum. Disposition of an interest in land must be in writing.** The requirement of writing is important for evidence. Writing also provides a protective function; the forensic function is why it has to be in writing.

The formality of writing must be overemphasized. The agreement must be very clear, clarity is important. The fundamentals must all be in the document. **Names and description of the contracting parties** and their **capacity**, **description of the property** which is usually described by L.R. No., if the land is registered it has an L.R. No. **physical situation of the land is to be included**, **consideration** which must be defined in concise terms to avoid ambiguity. It may also contain other terms that have been agreed by the parties. Where the parties have negotiated terms.

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