

Salient features of the Land Control Act

- i. Functions of the board and appeal procedure
- ii. Various forms
- iii. Effects of the consent.
- iv. Failure to obtain the consent

Land Control Sec 6 Transactions affecting agricultural land

(1) Each of the following transactions that is to say—

(a) the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;

(b) the division of any such agricultural land into two or more parcels to be held under separate titles, other than the division of an area of

(c) is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act.

..... This section does not apply to—

(a) the transmission of land by virtue of the will or intestacy of a deceased person, unless that transmission would result in the division of the land into two or more parcels to be held under separate titles; or (b) a transaction to which the Government or the Settlement F

The following five fundamental conclusions, in our view, are self-evident and flow directly from the above express provisions of the Land Control Act:

- i. *All transactions involving agricultural land situate in a land control area are void for all purposes unless the land control board within that land control area has sanctioned them.*
- ii. *Even declaration of a trust in agricultural land situated in a land control area is not spared; without consent of the land control board, it is also void.*
- iii. *Consent of the relevant Land Control Board must be obtained within six months of the making of the agreement relating to agricultural land. The High Court however has power, for good reason, to extend the period for applying for consent.*
 - (iv) *Where the transaction is ultimately void for lack of consent, any money or consideration paid by a would-be purchaser is recoverable as a debt.*
 - (v) *It is a criminal offence punishable by imprisonment or fine or both to pay or receive payment in respect of a void transaction or to take possession or remain in possession of land, which is the subject of such void transaction.*

The reason behind the above stringent provisions of the Act is to be found, in our view, in the rationale of the land control legislation. Before enactment in its present form, the Land Control Act had existed in one form or another in the colonial

period. Writing on a previous version of the same law namely, the *Land Control (Native Lands) Ordinance (No. 28 of 1959)*, the eminent Kenyan legal scholar, the late *Prof. HWO Okoth Ogendo* captured the purpose of the legislation thus:

“The purpose of the Land Control (Native Lands) Ordinance was to protect uninitiated peasants from improvident use of their rights under the new tenure system. Even though individualization was seen as necessary precondition to the planned development of the African areas, it was also appreciated that it could lead to many other problems more difficult to solve than the ones it was intended to eliminate. The Royal Commission had warned, for example, that in many peasant communities individualization had led to ‘the emergence of a chronic state of indebtedness, the continued fragmentation of holdings and the unproductive accumulation and holding of land by a few individuals in circumstances of little income-earning opportunity for those who have parted with the land’ ”. (See TENANTS OF THE CROWN, Acts Press (1991) page 74).

What is beyond doubt, the paternalistic nuances of its colonial origins notwithstanding, is the fact that the enactment of the Land Control Act in 1967 was informed by noble and deliberate public policy considerations. The Act seeks to regulate transactions in agricultural land, to among other things avoid sub-division of land holdings into uneconomical units, thus undermining agricultural production; to mitigate the danger of landlessness inherent in unchecked sale and alienation of land; to control land holding by non Kenyans, etc. It is for these reasons that in considering whether to grant or refuse consent regarding dealings in agricultural land, the land control board is obliged under the Act to consider, among others, such factors as the economic development of the land in question, the possibility of maintenance or improvement of standards of good husbandry; the agricultural land already owned by the proposed transferee; the fairness or unfairness of the proposed consideration or purchase price; and whether subdivision of the land in question would reduce the productivity of the land.

Sec 7. Recovery of consideration

If any money or other valuable consideration has been paid in the course of a controlled transaction that becomes void under this Act, that money or consideration shall be recoverable as a debt by the person who paid it from the person to whom it was paid, but without prejudice to section 22.

Granting or refusal of consent (1) In deciding whether to grant or refuse consent in respect of a controlled transaction, a land control board shall— (a) have regard to the effect which the grant or refusal of consent is likely to have on the economic development of the land concerned or on the maintenance or improvement of standards of good husbandry within the land control area; (b) act on the principle that consent ought generally to be refused where — (i) the person to whom the land is to be disposed of— (a) is unlikely to farm the land well or to develop it

adequately; or (b) is unlikely to be able to use the land profitably for the intended purpose owing to its nature; or (c) already has sufficient agricultural land; or (ii) the person to whom the share is to be disposed of— (a) already has sufficient shares in a private company or cooperative society owning agricultural land; or (b) would, by acquiring the share, be l

LAW OF CONTRACT ACT An Act of Parliament to apply the English common law of contract to Kenya, with certain modifications

At sec 3. (3) it provides; No suit shall be brought upon a contract for the disposition of an interest in land unless— (a) the contract upon which the suit is founded— (i) is in writing; (ii) is signed by all the parties thereto; and CAP. 23 [Rev. 2012] Law of Contract [Issue 1] 6 (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party: Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.