

FORESTS (HARVESTING) RULES, 2009

[L.N. 185/2009.]

1. Citation

These Rules may be cited as the Forests (Harvesting) Rules, 2009.

2. Interpretation

In these Rules unless the context otherwise requires—

“**commercial harvesting**” means harvesting of forest produce for the purpose of making the produce available for sale;

“**Community Forest Association**” means such association comprising of members of a community, established to protect and ensure the sustainable use of a forest within the community;

“**Director**” means the Director of Kenya Forest Service and includes a Divisional Forest Officer or such other Forest Officer as the Director may designate in writing;

“**felling area**” means such area that has been designated or set aside for the felling of selected trees;

“**forest road**” means a road into a state forest or a local authority forest including bridges and culverts along it;

“**harvesting**” includes the felling, trimming, docking, splitting, debarking, extracting, sorting or loading of any forest produce and includes the supervision of any of those activities;

“**licensee**” means a person granted a license to harvest timber, bamboo or forest produce;

“**proof of origin**” includes—

- (a) a certificate of origin;
- (b) a delivery note from the person arranging for the transportation of indicating where the forest produce originated and where they are to be delivered; or
- (c) a document from an owner of the forest produce attesting to the origin of the forest produce;

“**responsible authority**” in relation to a forest area, means the Service, in the case of a state or provisional forest, the local authority concerned in the case of a local authority forest and the private landowner in the case of private forests;

“**timber**” means—

- (a) any tree which has been felled or has fallen; or
- (b) the part of any tree which has been cut off or fallen, and all wood whether sawn, split, hewn or otherwise fashioned.

3. Application

(1) These rules shall apply to commercial harvesting of timber in state forests, provisional forests, registered private forests, and local authority forests.

(2) The provisions of rules 20, 21, 22 and 23 shall not apply to the harvesting of forest produce in private forests.

4. General provision for harvesting

(1) No person shall harvest timber in a state forest, provisional forest, a local authority forest or a registered private forest without a valid license.

- (2) Notwithstanding paragraph (1), a person may harvest timber for the purposes of—
- (a) final felling, to harvest the final tree crop when the stand has reached the final felling age or the final felling diameter;
 - (b) selection thinning, to improve the stand composition, growth conditions for the remaining stand, and the forest health;
 - (c) sanitary harvesting, to remove pest, disease, wildlife or dead, wind-thrown and wind-broken trees or otherwise damaged trees;
 - (d) reconstruction harvesting, to cut down a non-productive stand; or
 - (e) any other type of harvesting intended to establish and maintain the forest infrastructure, to shape forest landscape or transform the forestland for other uses.

5. Application for license

An application for a licence to harvest timber shall be made to the Director in accordance with the Act and the Rules made thereunder.

6. Damages to resources in the harvesting area

(1) A licensee shall harvest timber or bamboo in a manner that does not cause unnecessary damage to the trees, soil or resources in the felling area.

(2) The Director may, where a licensee has caused unnecessary damage to the trees, soil or resources in the felling area, direct the licensee, in writing, to remedy the damage attributed to the licensee within a specified time.

(3) A licensee shall, remedy to the satisfaction of the Director, within the time specified under paragraph (2), any damage attributable to the licensee's operations, which, was determined by the Director, to be excessive or was avoidable.

(4) Where a licensee fells or removes timber, bamboo or any other forest produce that is not designated for cutting or removal under the harvesting licence, the licensee shall be liable to pay such damages as may be assessed by the Director.

(5) The Director may, by a notice in writing, require a licensee to submit a plan showing how such licensee shall restock or cause the damaged area to be restocked.

7. Harvesting equipment

(1) Notwithstanding the registration requirements as set out under any other Regulations made under the Act, the Director may determine the equipment that may be used for harvesting.

- (2) In determining the equipment to be used in harvesting, the Director shall consider—
- (a) the possibility of effective use of different equipment and methods in relation to the terrain; and
 - (b) the stand characteristics, including length of slopes, inclination, topography, possibility of transit, obstacles, soil, ground bearing capacity, age of stands, species, composition or the quality of timber.

(3) The Director may specify on a licence, such conditions relating to the equipment and methods for harvesting as he considers appropriate.

8. Stump height and top diameter

(1) A licensee shall, when harvesting timber, ensure that where, the timber to be harvested is—

- (a) of indigenous stock—
 - (i) the height of the stump does not exceed fifteen centimetres;
 - (ii) the top diameter of the tree is not less than ten centimetres; and
 - (iii) no residue is removed from the forest.
- (b) a cultivated plantation—
 - (i) the stump height does not exceed eight centimetres;
 - (ii) the top diameter is not less than ten centimetres; and
 - (iii) no residue is removed from the forest.

9. Skid trail grades

(1) A licensee shall not, while moving felled timber or bamboo, use skid trails with grades exceeding fifteen percent.

(2) Notwithstanding paragraph (1), a licensee may use skid trails with grades exceeding fifteen percent where the steep grades are unavoidable.

(3) A licensee shall, when using skid trails with grades exceeding fifteen percent under paragraph (2)—

- (a) limit the grade to not more than one hundred meters in length; and
- (b) use practices that will minimize soil erosion and runoff, including among others, breaking the grade, installing drainage structures, or using soil stabilization practices.

10. Timber marking

(1) The Director shall assign a different mark for each station, state forest and private forest.

(2) A person shall distinctly mark, brand or otherwise identify timber felled with the respective mark assigned by the Director before removing or causing timber felled to be removed from the felling area.

(3) No person shall remove or cause to be removed from the felling area, timber that has been felled unless the timber has been distinctly marked, branded or otherwise identified with a mark issued by the Director.

(4) No person shall cause timber that has been felled to be marked or branded with a mark that was assigned to another station, state forest and private forest.

11. General provision for removing forest produce

(1) A person shall not transport forest produce without—

- (a) in the case of produce from state forest or local authority forest, a valid licence and a delivery note, issued by the Director; or
- (b) in the case of produce from any other land, a proof of origin issued by the owner of the forest from which the timber was felled; and
- (c) the proof of payment of the prescribed fee.

(2) Paragraph (1) shall not apply to a person transporting, within a duration of one month

- (a) sawn timber that does not exceed one tonne or one cubic meter, whichever is less;
- (b) bamboo that does not exceed one tonne or one cubic meter, whichever is less;
- (c) any quantity of such other forest produce as Director may, by order, specify.

(3) Every forest Officer in charge of a forest shall ensure the compliance of paragraph (2).

12. Contents of delivery note and proof of origin

(1) A delivery note or proof of origin shall specify—

- (a) the person to whom the forest produce is being delivered to; and
- (b) the place to which the forest produce is to be delivered.

(2) A delivery note or proof of origin issued under this Rule shall be valid for one trip from the point of loading to the point of offloading.

13. Prohibition of endorsement by other persons

A person who has been issued with a delivery note or proof of origin shall ensure that no other endorsement is made on such delivery note or proof of origin, by any other person other than the person who issued the delivery note or proof of origin.

14. Delivery note, proof of origin to be carried in the vehicle

The driver of any vehicle carrying forest produce for which a delivery note or proof of origin has been issued, shall ensure that at all times during the transportation of the timber, the original of the delivery note or proof of origin duly completed in respect of forest produce, is carried in the vehicle.

15. Timber delivery

A person shall not deliver any forest produce for which a delivery note or proof of origin has been issued, to—

- (a) any person, other than the person specified in the delivery note or proof of origin as being the person to whom the timber is to be delivered to; or
- (b) a place, other than the place specified in the delivery note or proof of origin as being the place to which the log timber is to be delivered.

16. Receiving timber

A person operating a sawmill shall not receive timber or bamboo delivered at a sawmill unless—

- (a) the timber or bamboo is accompanied by a proof of origin issued by the responsible authority; and
- (b) in the case of timber or bamboo from a state forest or a local authority forest, the timber or bamboo is distinctly marked or branded or otherwise identified with a mark assigned by the Director.

17. Record of timber or bamboo received

A person operating a sawmill, where timber or bamboo is received, shall keep a record at the sawmill, stating—

- (a) the date the timber or bamboo was received;

- (b) the species and product type of the timber or bamboo;
- (c) the quantity of timber or bamboo received; and
- (d) the origin of the timber or bamboo.

18. Copy of records to be kept for twelve months

(1) A person who operates a sawmill shall, keep at the sawmill, a copy of every record made in respect of timber or bamboo received at the sawmill, for twelve months, showing the quantities and source of the timber or bamboo received.

(2) A person who operates a sawmill shall, where it is not practicable to keep copies of the record at the sawmill, keep the record at any other place approved, by the Director in writing.

(3) A person who operates a sawmill shall, at the end of every year, submit to the Director a copy of the record relating to timber or bamboo received during that year.

19. Manager to compile records

(1) The person in charge of a sawmill shall, within three working days from the end of each calendar month, compile or cause to be compiled a record relating to the timber or bamboo received during that month.

(2) The Director shall prescribe the form and content of the record under paragraph (1).

20. Collection of firewood

(1) No person shall collect firewood from a state forest, a local authority forest or a provisional forest unless the person has a valid license issued by the Director.

(2) A person licensed to collect firewood shall collect firewood from the area designated for collection in the licence.

(3) A person licensed to collect firewood may collect firewood from—

- (a) fallen and waste wood in places where timber has been harvested and the wood suitable for milling has already been removed;
- (b) dead and fallen wood from natural forests that are not nature reserves;
- (c) fallen branches of plantation trees after pruning; or
- (d) such other source as the Director may, by notice in the *Gazette*, determine.

21. Application for collection of forest produce

An application for a license to collect forest produce shall be made to the Director in the form 1 in the Schedule and pay the prescribed fee.

22. Issue of license to collect forest produce

(1) The Director shall consider every application made under rule 21 and may, if satisfied that the application meets the requirements of the Act, issue a licence to the applicant upon payment of the prescribed fee.

(2) A license issued under this rule shall be in the Form 2 set out in the Schedule and shall be valid for the period specified in the permit.

(3) The Director may endorse, on a license, such conditions, as the Director considers necessary.

23. Direction to leave public forest produce area

(1) A forest officer may direct any person to immediately leave a public forest produce area, where the forest officer is of the opinion that—

- (a) it is necessary in the interests of public safety;
- (b) the person has failed or refused to pay a fee payable under rule 22 or has otherwise contravened the Act;
- (c) the person is blocking the access of a forest officer, or any other officer of the Service or any other person using the area; or
- (d) the presence of the person is adversely affecting the management of the area by the Service.

(2) A person shall comply with a direction given, by a forest officer, to that person under paragraph (1).

24. Closure of forest roads

(1) The Director may issue order that a forest road be closed for such period as he may consider necessary.

(2) The Director shall state the period of closure in the order.

(3) Where the Director has issued an order for the closing of a forest road, no person shall enter a state forest or local authority forest between 7.00 p.m and 6.00 a.m unless that forest is officially open for public use, the person is an employee of the Service or that person is accompanied by the employees of the Service.

25. Revocation of licenses

The Director may, by notice to any licensee, suspend or revoke a licence where—

- (a) the Director is reasonably satisfied that the licensee is carrying out practices that are detrimental to the forest;
- (b) a licensee has contravened any of the conditions in the license; or
- (c) a licensee has contravened any of the provisions of the Act.

26. Security bond

(1) The Director may require any person licensed under these Rules to deposit such amount of money that may be deemed to constitute appropriate security for good forestry practice.

(2) The Director shall, where the licensee has observed good forestry practice to his satisfaction, refund the deposit, without interest, to a licensee after a duration that does not exceed twenty-four months.

(3) The Director may, after giving the licensee an opportunity to be heard, confiscate a security bond where the licensee is responsible for forestry practice that is in breach of the provisions of these Rules or a licence issued under these Rules, where the Board is satisfied that the licensee has become a habitual offender.

27. Offences and penalties

A person who contravenes any provision of these Rules commits an offence and is liable, on conviction, to a fine not less than ten thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

SCHEDULE

FORM 1

(r. 21)

APPLICATION FOR A LICENCE TO COLLECT FIREWOOD

Applicant:			
Trading name (if any):			
Contact person:			
Postal address:			
		Postal code:	
Telephone: ()		Cell:	
E-mail:		Fax: ()	
Landowner:			
State Forest/ Local Authority Forest/ Private Forest			
Contact person:			
Postal address:			
		Postal code:	
Telephone: ()		Cell:	
E-mail:		Fax: ()	

Please note that in instances where there is more than one landowner, please attach a list of landowners with their contact details to the back of this page.

Municipality in whose area of jurisdiction the forest is located			
Contact person:			
Postal address:			
		Postal code:	
Telephone ()		Cell:	
E-mail:		Fax: ()	

Other permits or approvals: Include a description of all permits and approvals that will be necessary from the Forest Service and other governmental agencies in order to fully implement the project. Please attach project plans including preliminary grading plans, drainage plans, water quality management plans, construction site; Best Management Practices (BMPs) Plans.

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DECLARATIONS

I, in my personal capacity or duly authorized thereto hereby declare that:

- The information contained in this application form is true and correct, and
- I am fully aware of my responsibilities under the Forests Act, 2005 (No. 7 of 2005) and that failure to comply with these requirements may constitute an offence under the Forests Act, 2005 and the Rules made thereunder.

SCHEDULE—*continued*

Please Note: If acting in a representative capacity, a certified copy of the resolution or power of attorney must be attached.

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Signature of the applicant:

.....
Name of company:

.....
Date:

FORM 2

(r. 22)

LICENCE
KENYA FOREST SERVICE

Licence No.

Name:

Address:

The Service has evaluated your application Ref No. to collect firewood in a state forest and a licence is hereby issued for collection of firewood and is subject to the following conditions:

CONDITIONS OF LICENCE

1. The licence is valid for a period of days from the date hereof.
2.
3.
4.
5.

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Director
Kenya Forest Service
