



LAWS OF KENYA

THE GOVERNMENT LANDS ACT

CHAPTER 280

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CHAPTER 280

THE GOVERNMENT LANDS ACT

Commencement: 18th May, 1915

An Act of Parliament to make further and better provision for regulating the leasing and other disposal of Government lands, and for other purposes

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Government Lands Act.

Interpretation.

21 of 1953, s. 2,
 58 of 1959, s. 2,
 L.N. 142/1961,
 39 of 1968, s. 2,
 11 of 1993, Sch.
 Cap. 318.

2. In this Act, and in all conveyances, leases and licences and in all agreements, notices and documents relating to Government land, except where inconsistent with the context—

“agricultural purpose” means any purpose falling within the meaning of agriculture as defined in the Agriculture Act;

“Director of Surveys” includes any officer of the Survey Department authorized by the Director of Surveys to perform the duty in relation to which the term is used;

“farm” means an area leased for agricultural purposes;

“Government land” means land for the time being vested in the Government by virtue of sections 204 and 205 of the Constitution (as

contained in Schedule 2 to the Kenya Independence Order in Council, L.N. 718/1963. 28 of 1964. (Amendment) Act, 1964;

“highway authority” has the meaning assigned to it in the Traffic Act; Cap. 403.

“licensed surveyor” has the meaning assigned to it in the Survey Act; Cap. 299.

“livestock” includes horses, cattle, sheep, goats, swine, camels, mules, donkeys, ostriches and poultry;

“Principal Registrar” means the Principal Registrar of Government lands;

“purchaser”, “grantee”, “lessee” and “licensee” include personal representatives, heirs and assigns;

“registrar” means a registrar of Government lands, and includes the Principal Registrar;

“registry” means the registry of Government lands;

* The powers of the President under this paragraph are delegated to the Commissioner in the following cases only (Cap. 155 (1948), Sub. Leg.)—

- (a) for religious, charitable, educational or sports purposes on terms and conditions in accordance with the general policy of the Government and the terms prescribed for such purpose by the President;
- (b) for town planning exchanges on the recommendation of the Town Planning Authority, Nairobi, within the total value, and subject to the conditions, laid down by the President;
- (c) the sale of small remnants of land in the City of Nairobi and Mombasa Municipality acquired for town planning purposes and left over after those town planning needs have been met;
- (d) for the use of local authorities for municipal or district purposes, viz. office accommodation, town halls, public parks, native locations, fire stations, slaughterhouses, pounds, incinerators, mortuaries, crematoria, stock sale yards, libraries, hospitals, child welfare institutions, garages, housing schemes, markets and public cemeteries;
- (e) the extension of existing township leases on the fulfilment of the conditions specified therein as being precedent to such extensions;
- (f) the temporary occupation of farm lands on grazing licences terminable at short notice;
- (g) the sale of farms and plots which have been offered for auction and remain unsold, such grants being subject to the general terms and conditions of the advertised auction sale and the application therefor being submitted within six months of the date of the auction in the case of township plots and within twelve months in the case of farms, except that in the case of godown plots the power to sell shall not be limited to a period of six months from the date of sale.

“township” means a township, a municipality or an area reserved for a township;

“unalienated Government land” means Government land which is not for the time being leased to any other person, or in respect of which the Commissioner has not issued any letter of allotment.

PART II—ADMINISTRATION

Special powers of
President.

21 of 1953, s. 3,

58 of 1959, s. 3,

39 of 1968, s. 3.

3. The President, in addition to, but without limiting, any other right, power or authority vested in him under this Act, may—

(a)* subject to any other written law, make grants or dispositions of any estates, interests or rights in or over unalienated government land;

(b)* with the consent of the purchaser, lessee or licensee, vary or remit, either wholly or partially, all or any of the covenants, agreements or conditions contained in any agreement, lease or licence, as he may think fit, or, with the like consent, vary any rent reserved thereby;

(c)† extend, except as otherwise provided, the time to the purchaser, lessee or licensee for performing the conditions contained in any agreement, lease or licence liable to revocation for such period, and upon such terms and conditions, as he may think fit, and the period so extended, and the terms and conditions so imposed, shall be deemed to be inserted in the agreement, lease or licence and shall be binding on the purchaser, lessee or licensee, and on all transferees, mortgagees, assignees and other persons claiming through him;

(d)* accept the surrender of any lease or licence under this Act;

(e)† accept the surrender of any certificate granted under the East Africa Land Regulations, 1897, or of any lease granted under the Crown Lands Ordinance, 1902, and grant to the lessee a lease under this Act of the area the subject of the surrendered certificate or lease, provided such surrender is made within such period as the President may by notice in the Gazette direct, such period to be not less than twelve months from the commencement of this Act:

26 of 1897,

21 of 1902.

Provided that this paragraph shall not apply to land granted under the East Africa Land Regulations, 1897, or leased under the Crown Lands Ordinance, 1902, upon terms which differ from the ordinary terms in force at the time at which such land was granted or leased; and

(f) accept the surrender of any freehold conveyance under the Crown Lands Ordinance, 1902, or freehold grant under this Act.

4. All conveyances, leases and licences of or for the occupation of Government lands, and all proceedings, notices and documents under this Act, made, taken, issued or drawn shall, save as therein otherwise provided, be deemed to be made, taken, issued or drawn under and subject to the provisions of this Act.

All conveyances, etc., relating to Government land deemed to be under this Act.

5. There shall be a Commissioner of Lands and such other officers as may be necessary for the administration of this Act who may, if so authorized by the Commissioner either generally or specially, perform any of the duties or do any of the acts or things required or authorized by this Act, or by any law regulating the sale, letting, disposal and occupation of Government land, to be done by the Commissioner.

Commissioner of Lands and subordinate officers. 21 of 1953, s. 4, 39 of 1968, Sch.

6. The principal office of the Commissioner (in this Act referred to as the Land Office) shall be at Nairobi, and there shall be such sub-office or sub-offices at such place or places as the Minister may from time to time determine.

Office and sub-offices of Commissioner. 39 of 1968, Sch.

7. The Commissioner or an officer of the Lands Department may, subject to any general or special directions from the President, execute for and on behalf of the President any conveyance, lease or licence of or for the occupation of Government lands, and do any act or thing, exercise any power and give any order or direction and sign or give any document, which may be done, exercised, given or signed by the President under this Act:

Commissioner may execute conveyances, etc., and do other acts on behalf of President. 21 of 1953, s. 5, L.N. 142/1961, 39 of 1968, Sch., 11 of 1993, Sch.

Provided that nothing in this section shall be deemed to authorize the Commissioner or such officer to exercise any of the powers conferred upon the President by sections 3, 12, 20 and 128.

* The powers of the President under this paragraph are delegated to the Commissioner (Cap. 155 (1948), Sub. Leg.).

†The powers of the President under this paragraph to accept the surrender of a lease granted under the Crown Lands Ordinance, 1902, and to grant the lessee a lease of the same land under this Act are delegated to the Commissioner (Cap. 155 (1948), Sub. Leg.).

Actions relating to Government land. 21 of 1953, s.6, 39 of 1968, Sch., 4 of 1999, s. 62.

8. (1) All actions, suits and proceedings by or on behalf of the Government respecting—

- (a) Government land; or
- (b) any contract relating to Government land or any breach of any such contract; or
- (c) any trespass on Government land or any damages accruing by reason of such trespass; or
- (d) the recovery of any rent, purchase money or other monies in respect of Government land; or
- (e) any damages or wrongs whatsoever in any way suffered by the Government in respect of Government land or any other land; or
- (f) the recovery of any fine or the enforcement of any penalty under this Act,

shall be commenced, prosecuted and carried on by and in the name of the Commissioner who shall be represented by the Attorney-General or by any public officer or other person appointed by the Commissioner in any particular case.

(2) The Commissioner may, in his own name on behalf of the Government, where any rent is due under a lease or licence granted under this Act, upon service of notice in the prescribed form on the lessee or licensee, either—

- (a) distrain for the rent; or
- (b) direct the Principal Registrar that any land or buildings registered in the name of the lessee or licensee shall, to the extent of the interest of the lessee or licensee, be the subject of security for the rent and any penalty chargeable for the non-payment of rent.

(3) The Principal Registrar shall, without fee, register a direction under subsection (2) as if it were an instrument of mortgage or charge on the land or buildings referred to in paragraph (2)(b) and on registration, the direction shall, subject to any prior mortgage or charge, operate as a legal mortgage over or charge on the land or buildings to secure the amount due under that subsection.

(4) The Commissioner shall, on payment of the whole of the amount secured under this section, by notice in writing to the Principal Registrar, cancel the direction made under subsection (2) and the Principal Registrar shall, without fee, record the cancellation.

8A. (1) Where any person in whom there is vested an estate, interest or right in or over land dies intestate and without heirs, that estate, interest or right shall escheat to the Government. Escheat. 39 of 1968, s. 4.

(2) Where a company in which there is vested any estate, interest or right in or over land is dissolved, that estate, right or interest shall escheat in like manner as if it were vested in a person who dies intestate and without heirs, except in so far as the Companies Act provides for it to vest in some other person or authority.

(3) This section does not apply in respect of Trust land.

8B. Section 20 of the Constitution of Kenya (Amendment) Act, 1964, shall continue to have effect, as if it were set out in this section. Confirmation of earlier titles. 39 of 1968, s.4. 28 of 1964.

PART III—DISPOSAL OF LAND WITHIN TOWNSHIPS

9. The Commissioner may cause any portion of a township which is not required for public purposes to be divided into plots suitable for the erection of buildings for business or residential purposes, and such plots may from time to time be disposed of in the prescribed manner. Commissioner may cause land in townships to be divided into plots.

10. Leases of town plots may be granted for any term not exceeding one hundred years. Length of term. 16 of 1988, s. 2.

11. (1) Before any town plot is disposed off under section 12, the Commissioner shall determine— Price, conditions, rents, etc. to be determined by Commissioner. 16 of 1988, s. 2.

(a) the upset price at which the lease of the plot will be sold;

(b) the building conditions to be inserted in the lease of the plot;

(c) the special covenants, if any, which shall be inserted in the lease; and

(d) the periods into which the term is to be divided and the annual rent to be paid in respect of each period.

(2) For the purposes of the rent payable under a lease under this Part granted before the 1st January, 1989—

- (a) the term of the lease shall notwithstanding anything to the contrary contained in the lease, be divided into periods, the first of which shall expire on the 31st December, 1988 and each period thereafter shall expire on the 31st December of every tenth year until end of the term;
- (b) the annual rent shall be payable in advance on the 1st January in each year of the term;
- (c) the annual rent payable for the period expiring on the 31st December, 1988 shall be that reserved in the lease; and
- (d) the annual rent payable on and after the 1st January, 1989 shall for each next ensuing period of ten years be at such percentage of the unimproved value of the land as at the 1st January of such ensuing periods as the President may by order in the Gazette determine.

(3) For the purposes of the rent payable under a lease under this Part granted for a term commencing on or after the 1st January, 1989—

- (a) the term of the lease shall be divided into ten periods, the first of which shall expire on the 31st December of every subsequent tenth year until the end of the term;
- (b) the annual rent shall be payable in advance on the 1st January in each year of the term;
- (c) the annual rent payable for the first period of ten years of the term shall be that reserved in the lease; and
- (d) the annual rent payable on and after the 1st January, 1999 shall for each next ensuing period of ten years be at such percentage of the unimproved value of the land as at the 1st January of such next ensuing period as the President may by order in the Gazette determine.

Leases to be sold by auction.

12. Leases of town plots shall, unless the President otherwise orders in any particular case or cases, be sold by auction.

Notice of sale and conditions to be published in Gazette.

13. The place and time of sale shall be notified in the Gazette not less than four weeks nor more than three months before the day of sale, and the notice shall state—

- (a) the number of plots and the situation and area of each plot;

- (b) the upset price at which the lease of each plot will be sold;
- (c) the amount of survey fees and the cost of the deeds for each plot;
- (d) the term of the lease and the rent payable in respect of each plot; and
- (e) the building conditions and the special covenants, if any, to be inserted in the lease to be granted in respect of any plot:

Provided that the lease of any plot may be withdrawn from sale by the Commissioner at any time before it is offered for sale.

14. The auctioneer shall, before the commencement of the sale, read the terms and conditions of the sale, and all persons bidding at the sale shall be bound by the terms and conditions so read. Auctioneer to read terms and conditions of sale.

15. (1) The highest bid for the lease of each plot, together with the name of the purchaser, shall be announced by the auctioneer before proceeding to offer the lease of the next plot, and the purchaser shall thereupon pay one-quarter of the purchase money. Highest bid and name of purchaser to be announced, and deposit to be paid.

(2) In default of payment of the deposit, the lease of the plot may be offered for sale immediately, and any subsequent bid by the person who has made default may be ignored or refused.

16. (1) The balance of the purchase money, together with the rent due to the 31st December next following, the prescribed survey fee and the fees payable for the preparation and registration of the lease and the stamp duty payable in respect of the lease, shall be paid to the Commissioner at the Land Office within seven days from the date of the sale, and upon such payments being duly made the purchaser shall, subject to the provisions of this Act and if the conditions of the sale have been complied with, be entitled to a lease of the plot, which lease shall be presented to him for execution as soon as conveniently may be: Balance of purchase money, rent and fees to be paid within one month.

Provided that the balance of the purchase money shall not be payable within the time stated or thereafter unless and until the Commissioner can present to the purchaser the lease of the plot duly executed.

(2) The lease shall commence on the first day of the month next following that in which the sale was held, and rent shall be payable from the commencement of the lease.

If not paid purchaser to lose right to lease and deposit to be forfeited.

17. Subject to the proviso to subsection (1) of section 16, if the balance of the purchase money together with the rent, fees and duty mentioned in section 16 is not paid to the Commissioner within seven days from the date of the sale, the Commissioner may order that the deposit made by the purchaser be forfeited to the Government and the purchaser shall have no further claim to a lease of the plot.

Implied covenant against division, assignment and subletting. 21 of 1953, s. 8. 39 of 1968, Sch.

18. (1) In every lease of a town plot under this Act there shall be implied by virtue of this Act a covenant by the lessee not to divide the plot and not to assign or sublet any portion thereof, except with the previous consent of the Commissioner in writing and in such manner and upon such conditions as he may prescribe or require:

Provided that—

- (i) no application for such consent shall be entertained unless the building conditions (if any) have been complied with;
- (ii) in no case shall the annual rent reserved on any such portion be less than ten shillings nor the aggregate annual rent be less than that reserved in the original lease;
- (iii) the immediately foregoing proviso shall apply to every building lease granted under the Crown Lands Ordinance, 1902, in the event of the property held under such lease being subdivided and the portions assigned.

21 of 1902.

(2) Every application for consent under this section shall be made to the Commissioner and shall—

- (a) contain the applicant's proposals for development of each portion created by the subdivision; and
- (b) be accompanied by suitable plans in quadruplicate on durable material showing the proposed subdivisions.

(3) Every applicant for consent under this section shall furnish such further or other information or particulars as the Commissioner may require.

Valuation of land for rent. 16 of 1988, s. 3.

18A. Notwithstanding anything contained in any lease, the Commissioner shall every tenth year after the 1st January, 1989, until the expiration of the term, cause the land which is the subject of a lease under this Part granted before the 1st January, 1989, to be valued for the purpose of determining the rent which shall be payable for the second or subsequent period of such lease, whichever next follows the year in

and in respect of which the valuation is made and the rent so determined shall be payable on the first day of such period to commence on the 1st January, 1989:

Provided that where under section 18B the lessee successfully objects to the valuation, the rent payable shall, on the determination of the objection, be varied so as to be in accordance with the valuation determined under that section, and the lessee shall be entitled to a refund of the rent overpaid by him.

18B. (1) After each valuation provided for in section 18A has been made and before the expiration of the year in which the valuation was made, the Commissioner shall cause a notice to be served upon the lessee setting forth the value of the land determined and the annual rent which in accordance with such valuation will be payable by him during the next following period and calling upon the lessee to state in writing whether he objects to the valuation.

Lessee to be given rent to be paid after valuation. 16 of 1988, s. 3.

(2) If within three months of the date of the notice mentioned in subsection (1) the lessee notifies the Commissioner in writing that he objects to the valuation, the question of the value of the land shall be referred to and determined by an arbitrator appointed in accordance with the provisions of the Arbitration Act.

(3) It shall be no defence to an action for any rent payable under a lease granted under this Part that any notice required by this section to be served on the lessee has not been served.

PART IV—DISPOSAL OF AGRICULTURAL LAND

(1) *Offering of Land for Agricultural Purposes*

19. Subject to any general or special directions of the President, the Commissioner may cause land available for alienation for agricultural purposes to be surveyed and divided into farms.

Agricultural land to be divided into farms. 39 of 1968, Sch.

20. Leases of farms shall, unless the President otherwise orders in any particular case or cases, be sold by auction.

Leases to be sold by auction.

21. (1) When land available for leasing for agricultural purposes has been surveyed and divided into farms, and it is proposed that leases thereof shall be sold by auction, the Commissioner shall give notice in the Gazette of the place and time, which shall not be within three months of the date of the publication of such notice, at which leases in respect of the farms will be offered for sale by auction.

Notice of auction. 49 of 1960, s. 2.

(2) The notice of auction shall state—

- (a) the situation of the farms and the approximate area of each farm, and the time when and place where the plan of each farm may be seen;
- (b) the upset price at which the lease of each farm will be sold;
- (c) any special covenant or condition to be inserted in any lease to be granted;
- (d) the annual rent to be paid for each farm under the lease and the capital sum to be paid for a grant of the freehold of the land, on due compliance with the conditions thereof, under section 27; and
- (e) the survey fees and the cost of the deeds to be paid in respect of each farm.

(3) The Commissioner may withdraw any lease from sale at any time before the same is offered for sale.

Auctioneer to read terms and conditions of sale.

22. In the case of sales under this Part, the auctioneer shall, before the commencement of the sale, read the terms and conditions of the sale, and all persons bidding at the sale shall be bound by the terms and conditions so read.

Highest bid and name of purchaser to be announced, and deposit paid.

23. (1) The highest bid for the lease of each farm, together with the name of the purchaser, shall be announced by the auctioneer before proceeding to offer the lease of the next farm, and the purchaser shall thereupon pay one-tenth of the purchase money.

(2) In default of payment of the deposit, the lease of the farm may be offered for sale immediately, and any subsequent bid by the person who has made default may be ignored or refused.

Payment of balance of purchase money.

24. (1) The purchaser shall, on or before the first day of the month next following the month in which the sale has been held, or if that day is a Sunday or a public holiday on the first day thereafter which is neither a Sunday nor a public holiday, notify the Commissioner in writing whether he desires to pay the balance of the purchase money forthwith or desires to pay the same by instalments as hereinafter provided.

(2) If the purchaser elects to pay the balance of the purchase money forthwith, he shall pay the same together with the rent and other payments as is provided in section 25.

(3) If the purchaser elects to pay the balance of the purchase

money by instalments, the balance shall be paid by nine equal yearly instalments commencing on the 1st January next following the date of the sale; and there shall be included in the covenants of the lease a covenant expressing the amount of each instalment due and the date on which instalment is due; and, unless each instalment is paid on the date on which it falls due, the amount of each instalment shall be deemed to be added to the annual rent reserved by the lease and shall be payable and recoverable as rent.

(4) When the balance of the purchase money is payable by instalments, no assignment of the land leased or any part thereof shall be valid until the whole of the balance of the purchase money has been paid:

Provided that the lessee may at any time pay to the Commissioner the balance of the purchase money, and the Commissioner shall on the receipt of the balance endorse the lease accordingly.

25. The purchaser shall, on or before the first day of the month next following that in which the sale has been held, or if that day is a Sunday or a public holiday on the first day thereafter which is neither a Sunday nor a public holiday, pay to the Commissioner at the Land Office the rent due to the 31st December next following, the survey fees, the fees for the preparation and registration of the lease and the stamp duty payable in respect of the lease, and, if the purchaser has elected to pay the balance of the purchase money forthwith, the balance of the purchase money, and upon such payments being duly made the purchaser shall, subject to the provisions of this Act and if the conditions of the sale have been complied with, be entitled to a lease of the farm, which lease shall be presented to him for execution as soon as conveniently may be.

When rent, survey fees, etc., to be paid.

26. (1) If the payments mentioned in section 25 are not made within the prescribed time, the Commissioner may order that the deposit made by the purchaser be forfeited and that the purchaser shall have no further claim to a lease of the farm.

If payment not made deposit may be forfeited.

(2) The lease shall commence on the first day of the month next following that in which the sale has been held, and rent shall be payable from the commencement of the lease.

(2) Term of Lease and Rent to be Reserved

27. (1) Subject to subsection (2), every lease under this Part shall, subject to the provisions of this Act—

Term of lease. 49 of 1960, s. 3, 39 of 1968, Sch., 16 of 1988, s. 4.

(a) be granted for a term equal in length to the period by the end of which the lessee is required by the lease to have completed the developments thereby required of him;

- (b) be at a rent calculated at the rate of one per cent on the unimproved value of the land at the commencement of the term; and
- (c) contain a provision whereby the lessee, on the expiration of the term and on due compliance with the covenants and conditions contained in the lease, shall be entitled to a grant of the freehold of the land on payment to the Government of the unimproved value of the land at the commencement of the term, either—
 - (i) in one sum before the issue of the grant, or
 - (ii) with interest at the rate of six and one-half percent per annum, or, after the 31st December, 1965, at such rate as may be prescribed, by twenty equated yearly instalments of capital and interest in advance (except that interest shall not be payable for the first year), with a right for the grantee at any time to pay to the Government the balance of capital then remaining outstanding with interest to the date of payment:

Provided that land which is to be leased to the lessee of adjoining land comprised in a lease granted before the 1st January, 1961, may, with the consent of the lessee, be leased for the term, at the rent and on the conditions which would have been applicable in the case of a lease granted under this Part before that date, and sections 30 and 31 shall apply to such a lease as though the lease had been granted before that date.

(2) Where, at any time before the 30th June, 1961, the lessee of land leased for a term of ninety-nine years under the Crown Lands Ordinance, 1902, or under this Act, has applied to the Commissioner to surrender the term and to be granted a lease of the land under this Part for a term of nine hundred and ninety-nine years, and the Commissioner has approved the application, such lessee may, subject to the terms and conditions of the approval, require to be granted a lease under this subsection, and in such case the provisions of subsection (1) shall not apply, but instead, subject to the provisions of this Act -

- (a) the lease to be granted under this Part shall be for a term of nine hundred and ninety-nine years (less the period which has expired of the term of ninety-nine years), and, for the purposes of the rent to be reserved thereunder, the term shall be divided into periods, the first period to expire on the 31st December, 1990, and each period thereafter to expire on the 31st December of every tenth year until the end of the term,

and for the first period the rent shall be calculated at the rate of one per cent on the unimproved value of the land in the year 1960, and the Commissioner shall assess such value and shall, not later than the 30th June, 1961, give notice thereof to the said lessee;

(b) the lessee shall be entitled to object to the Commissioner’s assessment of the unimproved value of the land, and the provisions of section 31 shall thereafter apply, as if the assessment were a valuation under section 30, and the notice under paragraph (a) were a notice under subsection (1) of section 31; and

(c) as regards the remaining periods of the term, the provisions of sections 29, 30 and 31 respecting periods of leases shall apply to the contemporary periods of the lease, as if the lease were a lease under this Part granted before the 1st January, 1961.

28. (Repealed by 16 of 1988, s. 5).

29. The annual rent payable under a lease under this Part granted before the 1st January, 1989 shall be the rent reserved in the lease and for each subsequent period of ten years shall be charged at such percentage of the unimproved value of the land assessed every ten years as the President may by order in the Gazette determine.

Rent for the several periods.
34 of 1949, s. 2,
49 of 1960, s. 5,
16 of 1988, s. 6.

30. (1) The Commissioner shall, during the years 1960 and 1990 and, after the year 1990, in every tenth year until the expiration of the term, cause the land the subject of a lease under this Part granted before the 1st January, 1961, to be valued for the purpose of determining the rent which shall be payable for the land for the second or third period or for a subsequent period of such lease, whichever next follows the year in which the valuation is made, and the rent so determined shall be payable as from the beginning of the period for which it is determined to be payable:

Valuation of land for rent.
49 of 1960, s. 6,
16 of 1988, s. 7

Provided that where under section 31, the lessee successfully objects to the valuation the rent payable shall, on the determination of the objection, be varied so as to be in accordance with the valuation determined under that section, and the lessee shall be entitled to a refund of the rent overpaid by him.

(2) In the ascertainment of the value of any land under this sub-Part, there shall not be taken into consideration in augmentation of such value the value of improvements made or done on the land being valued.

Lessee to be given notice of rent to be paid after valuation. 49 of 1960, s. 7, 16 of 1988, s. 8.

31. (1) After each valuation provided for in section 30 has been made, and before the expiration of the year in which the valuation was made, the Commissioner shall cause a notice to be served upon the lessee setting forth the value of the land determined and the annual rent which in accordance with that valuation will be payable by him during the next following period.

(2) If within three months of the date of the notice men- (1) has not been served on him, the Commissioner shall, in the case of that lessee, extend the time for objection by such period as the Commissioner may think necessary to enable an objection to be made.

(3) It shall be no defence to an action for any rent payable under a lease granted under this Part that any notice required by this section to be given to the lessee has not been given.

(3) *Covenants as to Development*

First Schedule to have effect.

32. The First Schedule shall have effect as part of this Act.

Implied covenants as to development of farms.

33. Except where expressly varied or excepted, there shall, by virtue of this Act, be implied in every lease under this Part covenants by the lessee—

- (a) that he will within the first three years of the lease effect or place on the land leased improvements of the nature and to the value specified in the First Schedule as the improvements to be effected within such time upon a farm of the like area;
- (b) that he will at all times after the expiration of the third year of the lease have and maintain on the land leased improvements of the nature and to the value required under the last preceding covenant;
- (c) that he will within the first five years of the lease effect or place on the land leased additional improvements of the nature and the value specified in the First Schedule as the additional improvements to be effected within such time upon a farm of the like area; and
- (d) that he will at all times after the expiration of the fifth year of the lease have and maintain on the land leased additional improvements of the nature and to the value required under the last preceding covenant.

34. (1) In every lease of land under this Part there shall be implied by virtue of this Act a covenant by the lessee not to divide the land and assign or sublet any portion thereof except with the previous written consent of the Commissioner and in such manner and upon such conditions as he may prescribe and subject to the provisions of Part V:

Restriction on subdivision, assignment and subletting. 21 of 1953, s. 10, 39 of 1968, Sch.

Provided that—

- (i) no application for the consent shall be entertained unless the whole of the purchase price in respect of the lease has been paid;
- (ii) the annual rent reserved for each portion shall be at the rent prescribed in section 29 and shall not be less than ten shillings;
- (iii) the immediately foregoing proviso shall apply to every lease granted under the Crown Lands Ordinance, 1902, for grazing or agricultural purposes or both in the event of the property held under that lease being subdivided and the portions assigned.

21 of 1902.

(2) Every application for consent under this section shall be made to the Commissioner and shall—

- (a) contain the applicant’s proposals for apportionment of any development conditions in the original lease and for the development and maintenance of development of each portion of land to be assigned or sublet; and
- (b) be accompanied by suitable plans in quadruplicate on durable material showing the proposed subdivisions.

(3) Every applicant for consent under this section shall furnish such further or other information or particulars as the Commissioner may require.

PART V — DISPOSAL OF LAND FOR SPECIAL PURPOSES

35. (1) Every application for a lease or licence of or relating to unalienated Government land for any special purpose shall be made in writing in the form prescribed, and shall give such particulars as may be required by rules made under this Act.

Application for leases or licences for special purposes. 39 of 1968, Sch.

(2) If any person makes a false statement in such application with regard to any of the particulars required as aforesaid he shall forfeit all moneys paid by him in respect of the lease or licence applied for.

President's sanction required.

21 of 1953, s. 13,
39 of 1968, Sch.

36. Except as provided in this Part, the Commissioner shall not grant any application under this Part except with the approval of the President.

Rent, period and conditions.

37. The rent to be reserved under any lease or licence under this Part, the period and the covenants and conditions of the lease or licence shall be such as may be prescribed by rules made under this Act or as may be determined by the President.

Sales by auction for special purposes.

38. (1) The Commissioner may, with the approval of the President, cause a lease or licence under this Part to be sold by auction.

(2) The provisions of sections 13 to 17 (both inclusive) shall, so far as applicable, apply to every sale by auction under this Part.

Implied covenants.
21 of 1953, s. 14.

39. Except where expressly varied or excepted, there shall, so far as applicable, apply to every sale by auction under this Part covenants by the lessee—

- (a) not to divide, assign, sublet or otherwise part with the possession of the land leased or any part thereof, without the previous consent of the President in writing;
- (b) not to use the land leased for any purpose other than the purpose or purposes specified in the lease.

PART VI—LICENCES FOR TEMPORARY OCCUPATION OF LAND

Licence for temporary purposes.
21 of 1953, s. 15,
39 of 1968, Sch.

40. (1) Licences to occupy unalienated Government land for temporary purposes may be granted by the Commissioner.

(2) Unless it is expressly provided otherwise, a licence under this section shall continue for one year and thenceforward until the expiration of any three months' notice to quit:

Provided that the notice to quit may be served upon the licensee at any time after the expiration of nine months from the date of the licence.

(3) The rent payable under a licence under this section, the period and the agreements and conditions of the licence shall be such as may be prescribed by rules under this Act or as may be determined by the Commissioner.

(4) The benefit of a licence under this section may, with the consent of the Commissioner, be transferred by the licensee, and the transfer and the consent thereto shall be endorsed on the licence.

41. The occupant of any Government land under a licence under section 40 may remove any hut or other building erected by him during his occupation of the land at any time before the licence expires.

Removal of building under temporary licence.

42. If the rent payable under a licence granted under section 40 is unpaid for one month after it became due, or if any tax or taxes imposed upon the land, or upon the huts erected on the land, or upon the licensee, are unpaid for two months after they became due, or if the occupant of the land fails to keep the land in a reasonably clean condition, the Commissioner may declare his licence to be forfeited.

Penalty for unpaid rent, etc.

PART VII—KIBERA SETTLEMENT AREA

43. (1) The area of Government land situated in the Nairobi Area and described in the Fourth Schedule shall be known as the Kibera Settlement Area.

Kibera Settlement Area.
39 of 1968, s. 5.

(2) The Minister may make rules for the management, administration and control of the Kibera Settlement Area.

44 to 68. (*Repealed by 39 of 1968, s. 5*).

PART VIII—GENERAL PROVISIONS RELATING TO LEASES, LICENCES AND AGREEMENTS

(1) *Implied Covenants and Conditions*

69. Except as otherwise provided, there shall in every grant or lease under this Act be implied by virtue of this Act covenants by the grantor or lessor—

Implied covenants by grantor or lessor.
39 of 1968, Sch.

(a) that he has full power to grant the grant or lease;

(b) that the grantee or lessee, paying the rent and fulfilling the conditions therein contained, shall quietly hold and enjoy the premises without lawful interruption by the grantor or lessor or any person claiming under him, except so far as the laws for the time being in force may permit.

70. In every grant, lease and licence under this Act there shall, by virtue of this Act, be implied covenants and conditions by the grantee, lessee or licensee—

Implied covenants and conditions by lessee or licensee.
39 of 1968, Sch.

(a) that he will pay rent and royalties thereby reserved at the time and in the manner therein provided;

(b) that he will pay such taxes, rates, charges, duties, assessments or outgoings of whatever description as may be imposed, charged or assessed upon the land or the buildings thereon or upon the lessor or grantor or lessee or licensee in respect thereof.

Buildings on leased Government lands. 39 of 1968, Sch.

71. In the absence of special provisions to the contrary in a lease or licence under this Act, all buildings on Government lands leased or occupied under a licence, whether erected by the lessee or licensee or not, shall, on the determination of the lease or licence, pass to the Government without payment of compensation:

Provided that, in the absence of any special provision to the contrary in the lease, in the case of a lease for a term not exceeding thirty years the lessee shall be at liberty within three months of the termination (otherwise than by forfeiture) of the lease to remove any buildings erected by him on the land leased during the currency of the lease, unless the President elects to purchase those buildings; and, in the event of disagreement as to the purchase price of the buildings, the same shall be determined by arbitration.

Covenants and conditions binding on persons claiming under grant, lease or licence. 39 of 1968, Sch.

72. Every covenant or condition, whether expressed or implied, in a grant, lease or licence under this Act which is binding on a grantee, lessee or licensee shall, unless otherwise expressly provided in the grant, lease or licence, be binding upon all persons claiming an interest in the land the subject of the grant, lease or licence, and whose title is derived through or under the grantee, lessee or licensee.

Obligations of minors.

73. A minor who becomes a lessee or licensee under this Act shall be in the same position with regard to his liability and obligations under or in respect of his lease or licence as though he were of full age.

(2) *Rent, Royalties and Other Payments*

Rents and other payments. 13 of 1995, s. 92.

74. (1) The annual rent reserved under any lease or licence shall be payable in advance on the 1st day of January in each year of the term.

(2) All rents, royalties and other payments reserved under any lease or licence shall be debts due to the Government and shall be paid by the lessee or licensee at the Office of the Commissioner or at such other place as may be prescribed.

Penalty for non-payment of rent etc. 13 of 1995, s. 92, 4 of 1999, s. 62, 10 of 2010, s. 36.

75. (1) If any moneys due in respect of any rent, principal, instalment, royalty or other payment (in this section referred to as “the principal debt”) under any agreement, lease or licence under this Act, or under any Act repealed by this Act, remain unpaid after the due date, a late payment interest at the rate of two percent per month or part

thereof, or at such other rate as may from time to time be specified by the Minister in the Gazette, shall be charged on the amount remaining unpaid for more than one month after the due date until the full amount is recovered.

Provided that the interest chargeable under this subsection shall not exceed one hundred per centum of the principal rent outstanding.

(2) Any payment made under subsection (1) shall first be attributed to the payment of outstanding interest and thereafter only when such interest has been paid in full shall any payment be attributed to the reduction of the principal debt.

(3) Where any interest becomes payable under subsection (1), the Commissioner shall serve on the person in debt a notice demanding payment of such interest in addition to the other moneys then due and thereafter the provisions of subsections (2), (3) and (4) of section 8 shall apply.

(4) Notwithstanding the foregoing provisions of this section, the Commissioner may, upon good and sufficient cause shown and with the written approval of the Minister responsible for Finance, remit the whole or any part of any late payment interest provided for by this section.

75A. Notwithstanding any other provision of this Act, the Commissioner shall refrain from assessing or recovering late payment interest outstanding upto and including the 30th June, 2010.

Commissioner to refrain from assessing interest. 10 of 2010, s. 37.

76. Without prejudice to his right to recover in any other way, the Commissioner may sue in the court for any rent, principal, instalment, royalty or other payment, payable under any agreement, lease or licence under this Act, or under any Act repealed by this Act, which is in arrear, and for any penalty payable under section 75.

Commissioner may sue for rent, etc., in arrear. 49 of 1960, s. 8.

(3) Forfeiture for Breach of Covenant or Condition

77. (1) If the rent or royalties or any part thereof reserved in a lease under this Act is at any time unpaid for the space of thirty days after the same has become due, or if there is any breach of the lessee's covenants, whether express or implied by virtue of this Act, the Commissioner may serve a notice upon the lessee specifying the rent or royalties in arrear or the covenant of which a breach has been committed, and at any time after one month from the service of the notice may commence an action in the High Court for the recovery of the premises, and, on proof of the facts, the High Court shall, subject to relief upon such terms as may appear just, declare the lease forfeited, and the Commissioner may re-enter upon the land.

Forfeiture of lease if rent unpaid or for breach of covenant.

(2) In exercising the power of granting relief against forfeiture under this section, the Court shall be guided by the principles of English law and the doctrines of equity.

Forfeiture of licence.

78. (1) Except where other provision is made in this Act, if the rent or any part thereof payable under a licence issued under this Act is at any time unpaid for a space of thirty days after the same has become due, or if the licensee fails to comply with, or commits any breach of, the conditions, whether express or implied, of his licence, the Commissioner may cause an application to be made to a subordinate court of the first class within whose local jurisdiction the land the subject of the licence is situate to declare the licence forfeited.

(2) Upon receipt of an application under subsection (1), together with a statement specifying the rent in arrear or the condition which has not been complied with or of which a breach has been committed, the court shall cause to be served upon the licensee a copy of the statement, together with a notice of the date, not being less than fourteen days from the date of the notice, when the application will be heard.

(3) If upon the date fixed for the hearing of the application or to which the hearing is adjourned it is prove to the satisfaction of the court that rent is in arrear or that the licensee has failed to comply with or has committed a breach of any of the conditions of the licence, it shall, subject to such relief against forfeiture for non-payment of rent as to it may seem just, declare the licence forfeited.

Debt to Government not extinguished by forfeiture.

79. No forfeiture shall operate to extinguish any debt to the Government in respect of any rent, royalty or other payment to be made by a lessee or licensee under a lease or licence forfeited.

Acceptance of purchase money or rent not to operate as waiver of forfeiture.

80. The acceptance by or on behalf of the Government of any purchase money or part thereof or of any rent or other payment under any lease or licence shall not be held to operate as a waiver by the Government of any forfeiture accruing by reason of the breach of any covenant or condition annexed to any sale, lease or licence of or respecting Government land, whether the sale, lease or licence is under this Act or under any other Act relating to the disposal of Government land.

PART IX—RESERVATIONS

(1) *Water*

Reservation of water.

81. A conveyance, lease or licence under this Act shall not, unless otherwise expressly provided therein, confer any right to the water of any spring, river, lake or stream, other than to such water as may be

required for domestic purposes upon the land sold, leased or occupied under the licence.

(2) *Foreshore*

82. A conveyance, lease or licence under this Act shall not, unless otherwise expressly provided therein, confer any right to the foreshore. Reservation of foreshore.

(3) *Minerals*

83. (1) A conveyance, lease or licence under this Act or under any Act replaced by this Act shall not confer any right to any unextracted minerals or mineral oil, except in so far as the conveyance, lease or licence provides. Reservation of minerals and precious stones.
G.N. 936/1952,
39 of 1968, Sch.,

(2) There is hereby reserved to the Government the right to enter on any Government land which has been conveyed, leased or occupied under licence under this Act or any Act replaced by this Act, and to search for, work and remove any minerals and any substance containing minerals and any mineral oil under or upon the land.

(3) The Minister may make rules providing for compensation to be paid or relief to be given to the grantee, purchaser, lessee or occupier under a licence for any damage to buildings, roads or crops or otherwise, and for any interference with the rights of occupancy of land, caused by the exercise of the rights hereby reserved.

(4) A purchaser or lessee of Government land under this Act or under the Crown Lands Ordinance, 1902, may remove and use any of the minerals mentioned in the Second Schedule and found in or upon the land purchased or leased: 21 of 1902.

Provided that a lessee of Government land situate within a township or leased for building purposes shall not exercise the rights conferred by this section except with the consent of the Commissioner first obtained and in accordance with such conditions as the Commissioner shall impose with the purpose of preventing damage to the surface of the land leased or occupied.

(5) The right reserved to the Government to enter upon any Government land sold or leased and to remove therefrom any of the minerals mentioned in the Second Schedule shall not be exercised without the consent of the purchaser or lessee, unless such mineral is required for a public purpose:

Provided that any pit or quarry made in the exercise of that right shall be filled up, fenced or secured by and at the expense of the Government.

(6) A purchaser or lessee of Government land under this Act may, subject to the provisions of this subsection, without the payment of a royalty, remove any of the minerals mentioned in the Third Schedule which may be found upon the land sold or leased:

Provided that—

- (i) the minerals shall be removed in such quantities only as may be required for use on such land, and shall be used for the purposes of the farm on such land only;
- (ii) the right conferred by this subsection shall not apply to minerals within any area included within any claim under the mining laws or which is the subject of a lease granted for the mining or working of such mineral.

(7) The Minister may, by order, amend the Second Schedule or the Third Schedule by adding any mineral thereto.

Delegation of rights reserved to Government.
39 of 1968, Sch.

84. A right reserved to the Government under section 83 may be exercised by any person or persons authorized by the Minister or by or under any Act or law relating to mines or minerals.

(4) Roads, Thoroughfares and Outspans

Saving of public roads, etc.
39 of 1968, Sch.
21 of 1902.

85. (1) All proclaimed or reserved roads, thoroughfares and outspans being or existing on any land sold or leased under this Act, or under the Crown Lands Ordinance, 1902, shall remain free and uninterrupted unless the same are closed or altered by competent authority.

(2) In subsection (1), “reserved roads” includes land which is in any manner described in a conveyance or lease under this Act or any Act repealed by this Act, as being reserved for a road.

(5) Entry on Land for Certain Public Purposes

Power to erect telegraph poles, etc., on land sold or leased.
39 of 1968, Sch.

86. The Government may at any time enter upon any land sold, leased or occupied under a licence under this Act, and may there set up poles and carry electric lines across such land, and may lay sewers, water-pipes or electric lines therein, without paying compensation, but making good all damage.

Power to construct dams and water-channels, and divert rivers, etc.
39 of 1968, Sch.

87. The Government may at any time enter upon any land sold, leased or occupied under this Act, and may there do any work which it may consider necessary for maintaining or improving the flow of water

in any river or stream on the land, and may construct and maintain dams or divert any river or stream, without paying compensation except for buildings and crops destroyed or damaged.

88. The Minister may, by writing under his hand, authorize officers of the Government and contractors and their servants and agents to exercise the powers conferred by sections 86 and 87.

Delegation of powers.
49 of 1960, s. 11,
39 of 1968, Sch.

89. Whenever under section 87 compensation is payable, the compensation shall not in any case exceed the market value of the buildings or crops destroyed or damaged.

Compensation not to exceed market value.
49 of 1960, s. 11.

90. Where any damage or loss has been caused to any land by or as a result of entry thereon under section 86 or section 87 by reason of the injury or destruction of trees, bushes or shrubs planted thereon, a reasonable sum, not exceeding the market value of the standing trees, bushes or shrubs, shall be paid by way of compensation for the damage or loss notwithstanding that compensation is not otherwise payable under any of those sections.

Compensation for damage to planted trees and shrubs.
21 of 1953, s. 22,
49 of 1960, s. 12.

PART X—REGISTRATION OF TRANSACTIONS RELATING TO GOVERNMENT LANDS

(1) *Government Lands Registry*

91. In this Part “land registered under this Part” means land in respect of which the conveyance, lease or licence from the Government was required by this Part to be registered in the Government Lands Registration Office.

Interpretation of Part.
39 of 1968, Sch.

92. Nothing in this Part shall apply to or affect a lease or licence granted under the Mining Ordinance (now repealed) or the Mining Act, or under any Act repealed by or substituted for either of those Acts, or any transfer of, or other transactions in relation to, any such lease or licence or any right thereunder.

Part not to apply to leases or licences granted under mining laws.
Cap. 148 (1926).
Cap. 306.

93. There shall be established under the control of the Commissioner at Nairobi, and at such other places as the Commissioner may determine, an office, to be known as the Government Lands Registration Office.

Government Lands Registration Office.
39 of 1968, Sch.

94. The President shall appoint an officer, to be known as the Principal Registrar of Government Lands, with such registrars as may from time to time be required.

Registrars to be appointed.
58 of 1959, s. 18.

(2) *Registration of Government Conveyances, Leases and Licences*

Commissioner to deliver for registration all subsisting conveyances, etc.

95. The Commissioner shall deliver to the Principal Registrar for registration as hereinafter directed the original, duplicate or counterpart of every conveyance, lease or licence of or in respect to Government land made or granted by or on behalf of the Government.

96. (*Repealed by 39 of 1968, s. 7.*)

Register of Government Lands.

97. The Principal Registrar shall keep a register, to be called the Register of Government Lands, and shall bind up therein every document delivered to him under section 95, and each conveyance, lease or licence shall constitute a separate folio of the register, and the Principal Registrar shall cause to be recorded therein the particulars of every document, dealing and other matters by this Act required to be registered or entered in the register affecting the land included under each conveyance, lease or licence.

98. (*Repealed by 39 of 1968, s. 7.*)

(3) *Registration of Transactions Affecting Government Lands*

Transactions affecting registered land to be registered. 58 of 1959, s. 20.

99. All transactions entered into, affecting or conferring or purporting to confer, limit or extinguish any right, title or interest, whether vested or contingent, to, in or over land registered under this Part (other than a letting for one year only or for any term not exceeding one year), and all mutations of title by succession or otherwise, shall be registered under this Part.

No evidence may be given of certain transactions unless by registered instrument.

100. (1) No evidence shall be receivable in a civil court—

- (a) of the sale, lease or other transfer *inter vivos* of land registered under this Part, unless the sale, lease or other transfer is effected by an instrument in writing and the instrument has been registered under this Part; or
- (b) of a lien, mortgage or charge (other than a lien, mortgage or charge which may arise or be created in favour of the Government under or by virtue of any Act or other enactment) of or upon such land, unless the mortgage or charge is created by an instrument in writing and the instrument has been registered under this Part; or
- (c) of a sale or other transfer *inter vivos* of a registered lien, mortgage or charge, unless the sale or other transfer is

effected by an instrument in writing and the instrument has been registered under this Part.

(2) Nothing in subsection (1) shall apply to an equitable mortgage by deposit of documents of title if a memorandum of that equitable mortgage has been registered in the register; but on the discharge of the equitable mortgage, a memorandum of the discharge shall be registered in the register.

(3) Every memorandum required to be registered under subsection (2) shall be transmitted to the registry in duplicate, and shall be in such form, and there shall be paid on the registration thereof such fee, as may be prescribed.

101. Every document executed, and every will of a person dying, creating, assigning, limiting or extinguishing any right, title or interest to or in or over land registered under this Part shall, unless registered under this Part, be deemed void against all parties claiming an adverse interest thereto on valuable consideration by virtue of any subsequent document which has been duly registered:

Unregistered documents void. 58 of 1959, s. 21.

Provided that—

- (i) fraud or collusion in obtaining the last-mentioned document, or in securing such prior registration, shall defeat the priority of the person claiming thereunder;
- (ii) priority shall not be lost merely in consequence of the person claiming under the registration having been affected with actual or constructive notice of the document first executed, except in the case of actual fraud;
- (iii) nothing herein contained shall be deemed to give any greater effect or different construction to any document registered in pursuance thereof, save the priority hereby conferred on it;
- (iv) such priority shall not be affected by the subsequent registration of any document executed before the document first registered;
- (v) every will of a testator dying shall, so far as regards any land registered under this Part to be affected thereby, take effect as against other documents affecting the same land from the date of its registration:

Provided that every such will shall take effect from the date of

the death of the testator if registered—

- (a) in the case of a person dying within Kenya within three months next after such death;
- (b) in the case of a person dying outside Kenya, within twelve months next after such death.

Documents exempt
from sections 100
and 101.
58 of 1959, s. 22.

102. Nothing in sections 100 and 101 shall apply to the following documents, nor shall they be capable of registration—

- (a) a composition deed; or
- (b) a document relating to shares in a joint stock company, notwithstanding that the assets of the company consist in whole or in part of land registered under this Part; or
- (c) a debenture given by a joint stock company and creating only a floating charge over the assets of the company (notwithstanding that the charge, upon the happening of a subsequent event, becomes fixed upon all or any of the assets):

Provided that those sections shall nevertheless apply to that debenture if it is not protected by a caveat registered under section 116; or

- (d) an endorsement upon or transfer of a debenture issued by joint stock company; or
- (e) a document not itself creating, declaring, assigning, limiting or extinguishing a right, title or interest to or in land registered under this Part, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish that right, title or interest; or
- (f) a lease for one year only or for any term not exceeding one year.

Certain documents
executed before
commencement of
Act to be registered.
Cap. 285.

103. (1) Every document executed before the commencement of this Act creating, declaring, assigning, limiting or extinguishing a right, title or interest to, in or over land registered under this Part which has not before the commencement been registered under the Registration of Documents Act shall forthwith be registered under this Part by the person in whose favour the document is made or his successor in title:

Provided that, if the document is not presented for registration within the time prescribed for the registration of the document under the Registration of Documents Act, the person presenting the same for registration shall be liable to the payment of the fines prescribed in section 10 of that Act, and the Principal Registrar may impose the fine in his discretion and delay registration until the fine is paid.

(2) Every document as aforesaid if not registered within six months after the commencement of this Act shall be void against all parties claiming an adverse interest thereto by virtue of any subsequent document which has been duly registered, subject, however, to the like provisos as are set forth in section 101.

104. (1) Except as is hereinafter otherwise provided, every document presented for registration shall be accompanied by the prescribed form and fee, and shall be registered in the order of time in which it is presented for that purpose; and documents registered in respect of or affecting the same land shall be entitled to priority according to the date of registration, and not according to the date of each document itself.

Priority given by registration not by execution.
58 of 1959, s. 23.

(2) The registrar, upon registration of a document, shall file a photostatic copy in his office and deliver the original to the person entitled thereto, and so soon as registered every document shall, for the purposes of this Act, be deemed and be taken to be embodied in the register as part and parcel thereof.

(3) The time of presentation endorsed on the document in the registry shall be deemed to be the time of registration.

105. A person who acquires a right, title or interest in, to or over any land registered under this Part on the death or bankruptcy of any person or on the liquidation of any company, or under a certificate or order of, or on the sale by, the court, shall present for registration the document evidencing the right, title or interest.

Registration of mutations of title on death, etc.
58 of 1959, s. 24.

106. A person in whose favour a judgment, decree or order has been pronounced, granted or made relating to or affecting any land registered under this Part may transmit to the registry a certified copy of the judgment, decree or order.

Judgments and orders of court may be registered.
58 of 1959, s. 25.

107. (1) No grant of probate or of letters of administration shall be admitted to registration in respect of the title to any land registered under this Part except upon production to the registrar of a certificate signed by or on behalf of the Estate Duty Commissioners constituted by the Estate Duty Act certifying that all estate duty payable under that Act in respect of the land as aforesaid upon the death of the person to

Refusal of registration in certain cases.
7 of 1955, s. 4,
58 of 1959, s. 26,
29 of 1967, 1st Sch.,
39 of 1968, Sch.,
Cap. 257 (1948).

whose will or estate the grant as relates has been paid in full, or that no estate duty is payable thereon.

(2) A registrar shall not register any document purporting to transfer any land registered under this Part, being land situated within the area of jurisdiction of a local authority, unless there is produced to the registrar the written statement mentioned in section 21 of the Rating Act and unless the statement is expressed to be available until the day upon which, or until a day not earlier than that upon which, the document was registered.

Cap. 267.
L.N. 218/1986.

(3) A registrar shall not register any document purporting to transfer or create any interest in land, unless a certificate is produced to him certifying that no rent is owing to the Government in respect of the land, or that the land is freehold.

(4) A registrar may refuse to register any document which he considers unsuitable for photostatic copying.

(5) A registrar may refuse to register any document presented for registration under section 103 if the title of the person creating, declaring, assigning, limiting or extinguishing the right, title or interest is not evidenced by a registered document or memorandum or by some entry in the register.

Powers of attorney to be registered.
58 of 1959, s. 27.

108. Powers of attorney relating to or affecting land registered under this Part, and revocations of those powers, shall be registered in such manner as may be prescribed, and a registrar may refuse to register any document executed by an attorney whose authority has not been duly registered:

Provided that powers of attorney and revocations of those powers which have been duly registered under and in accordance with the Registration of Titles Act shall be deemed to have been registered under and for the purposes of this Act.

Cap. 281.

Registrar may call for proof and give notice to third parties.
58 of 1959, s. 28.

109. (1) Every registrar shall be entitled, if he sees fit so to do, to require any person applying for the registration of any document to prove its due execution, the identity of the property affected by the document or of the parties to it and in case of a copy, other than the copy of a judgment, decree or order of a court, the loss or destruction of the original; and, where he may have reason to apprehend that a fraud has been or is about to be committed on any person, he shall give notice to that person of the intended registration in order to prevent the same being effected to his prejudice.

(2) If the registrar is satisfied upon inquiry that the document was duly made, and, in the case of an authenticated copy, of the loss or destruction of the original, and as to the identity of the property or the parties, and that there is no reason to believe that a fraud has been or is about to be committed, he shall, subject to the other provisions of this Part, and the rules made under this Act, register the document, and the registration shall take effect from the time of presentation.

(3) If he is not satisfied, he shall refuse to register the document, and shall return the same unregistered, together with a statement of his reasons in writing.

110. (1) A document, other than a judgment, decree or order of a court, to which there is attached a map or plan which is not signed by the Director of Surveys shall not be accepted for registration.

Plans.
21 of 1953, s. 23,
58 of 1959, s. 29.

(2) Whenever a registrar considers that in regard to any document presented for registration a description of the boundaries of any land, sufficiently clear and accurate to prevent confusion, cannot be obtained unless a plan is attached to the document, he may refuse to register the document until a plan of the land the subject of the document, signed by the Director of Surveys, is attached to the document, and presented for registration therewith:

Provided that—

- (i) in the case of the refusal, if the document is presented for registration together with a plan to the satisfaction of the registrar within such time as the registrar considers reasonable under the circumstances of the case, the document shall be deemed to have been registered at the time of presentation;
- (ii) an appeal shall lie against an order made by a registrar under this subsection to the Principal Registrar, and the Principal Registrar may reverse or alter the order; and, if the order of the Principal Registrar directs the document to be registered, the registrar shall obey the same; but if the Principal Registrar confirms the order of the registrar his decision thereon shall be final.

111. (1) Every document produced for registration shall contain embodied therein, or in a schedule annexed thereto, an accurate and clear description of the property affected thereby, and its boundaries, extent and situation, and either a reference to the volume and folio of the register in which the property has been previously registered or a

Description of land in documents.
39 of 1968, Sch.

reference to the conveyance, lease or licence from the Government relating to the land affected by the transaction.

(2) If the property consists of a divided portion of land, the property of the person alienating the same or any interest therein, the portion shall be clearly and accurately defined by its particular boundaries and extent, and accompanied by a plan signed by the Director of Surveys.

(3) If the property consists of an undivided share in immovable property, the proportion which the same bears to the entire property shall be stated, and a description of the property shall be given as required by subsection (1).

Treatment of documents contravening section 111.

112. No document which does not state the particulars required by section 111 shall be admitted to registration, except with the sanction of the Principal Registrar upon the necessary particulars being supplied by affidavit by the person producing the document for registration, and on such other terms as the Principal Registrar may think expedient.

Appeal from order refusing registration.

113. (1) An appeal shall lie against an order refusing to register any document from the registrar to the Principal Registrar, and the Principal Registrar may reverse or alter the order.

(2) Any person dissatisfied with the decision of the Principal Registrar on an appeal under subsection (1) may, except as otherwise provided in subsection (2) of section 110, appeal against the decision to the High Court within thirty days from the decision being communicated to him; and the registrar shall, in terms of the decision of the Principal Registrar, or, in case of an appeal being taken, of the High Court on appeal, register or refuse to register the document.

(3) If the Principal Registrar acting as a registrar refuses to register any document, any person dissatisfied with the order refusing to register the document may appeal against the order to the High Court within thirty days from the date of the order; and the Principal Registrar acting as a registrar, shall in the terms of the decision of the High Court on appeal, register or refuse to register the document.

When registration to take effect after successful appeal. 58 of 1959, s. 30, L.N. 559/1962.

114. (1) If the registration of the document is ordered by the Principal Registrar of the High Court to be made on condition of the payment of a fee for registration or other terms, then upon the compliance of the person seeking registration with such condition or terms the registrar shall register the document, and the same shall be deemed to have been registered on the date of the compliance.

(2) If the Principal Registrar or the High Court on appeal decides that the document should have been registered when originally tendered

to the registrar, the document shall, upon registration, be deemed to have been registered at the time of presentation.

115. If any document presented for registration is not written in English, the registrar shall refuse to register the same:

Language of documents.

Provided that the registrar shall register any document not written in English presented for registration under section 103.

116. (1) Any person claiming the right, whether contractual or otherwise, to obtain an interest in any land, that is to say, some defined interest in the land capable of creation by an instrument registrable under this Act, and any person in whose favour a debenture has been executed by a company within the meaning of the Companies Act, or by a company to which Part X of that Act applies, (hereinafter called the caveator) may lodge a caveat with the registrar forbidding the registration of any document affecting the land either absolutely or unless the transaction is expressed to be subject to the claim of the caveator as may be required in the caveat, or to any conditions conformable to law expressed therein.

Caveats.
58 of 1959, s. 31,
21 of 1990, Sch,
6 of 2006, s. 78.
Cap. 486.

(1A) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may lodge a caveat, which shall be in the prescribed form forbidding the registration of any document affecting the land the subject thereof absolutely and shall lodge a non-absolute caveat over any property in respect of which he is informed by the National Museums of Kenya that a declaration by the Minister under the National Museums and Heritage Act has been applied for, or is about to be gazetted or has been gazetted affecting the property in question; and upon gazette ment the caveat takes effect as a charge over the land.

(2) A caveat lodged under subsection (1) shall be in the prescribed form and shall be verified by the oath of the caveator or his agent, and shall contain an address in Kenya at which notices may be served.

Form of caveat.

(3) Upon the receipt of a caveat, the registrar shall make a memorandum thereon of the date and hour of the receipt thereof, and shall enter a memorandum thereof in the register, and shall forthwith send a notice of the caveat, by post or otherwise, to the person against whose title the caveat has been lodged (hereinafter called the caveatee).

Notice to caveatee.

(4) So long as any caveat remains in force prohibiting the transfer or other dealing with land, the registrar shall not, unless the caveator consents or (if the caveat does not forbid registration absolutely) the transaction is expressed to be made subject to the claim of the caveator or to any conditions expressed in the caveat, enter in the register any

Effect of caveat.

memorandum of transfer or other instrument purporting to transfer or otherwise deal with or affect the land in respect to which the caveat is lodged.

Opposing caveat.

(5) The proprietor or other person claiming land may, by summons, call upon the caveator to attend before the court to show cause why the caveat should not be withdrawn, and it shall be lawful for the court, upon proof that the caveator has been summoned, and upon such evidence as the court may require, to make such order in the premises, either *ex parte* or otherwise, as to the court seems fit; and, where a question of right or title requires to be determined, the proceedings shall be as nearly as possible in conformity with the rules of court in relation to civil causes.

Removal of caveat.
L.N. 218/1986.

(6) Except in the case of a caveat lodged by the registrar, the caveatee may make application in writing to the registrar to remove the caveat, and thereupon, and upon payment of the prescribed fee, the registrar shall give forty-five days' notice in writing to the caveator requiring that the caveat be withdrawn, and, after the expiration of the notice, the registrar shall remove the caveat from the register by entering a memorandum that the caveat is discharged, unless he has been previously served with an order of the court extending the time as herein provided.

Caveatee to give
address.

(7) The caveatee shall in an application under subsection (6) give an address in Kenya at which notices and proceedings may be served.

Extension of time to
caveator.

(8) The caveator may, either before or after receiving such notice from the registrar, apply by summons to the court for an order to extend the time beyond the twenty-eight days mentioned in the notice, and the summons may be served at the address given in the application of the caveatee, and it shall be lawful for the court, upon proof that the caveatee has been summoned and upon such evidence as the court may require, to make such order in the premises, either *ex parte* or otherwise, as the court thinks fit.

Withdrawal of
caveat.

(9) The caveator may, by notice in writing to the registrar, withdraw his caveat at any time, but the withdrawal shall not prejudice the power of the court to make an order as to payment by the caveator of the costs of the caveatee incurred before the receipt by the caveatee of notice in writing of the withdrawal of the caveat.

Registration of
withdrawal.

(10) An entry shall be made by the registrar in the register of the withdrawal, lapse or removal of any caveat or of any order made by the court.

No second caveat
relating to same
matter.

(11) It shall not be lawful for the same person or for anyone on his behalf to lodge a further caveat in relation to the same matter and against the same title.

(12) Any person, other than the registrar, lodging or continuing any caveat wrongfully and without reasonable cause shall be liable to make compensation to any person who may have sustained damage thereby.

Compensation for wrongful caveat.

117. No document shall be registered unless the fee prescribed has been paid and, if the document is one which is liable to stamp duty, the document is duly and sufficiently stamped.

Fee and stamp duty to be paid before registration.

118. (1) Except as may be otherwise prescribed, the registrar shall cause a photostatic copy to be filed of every document accepted for registration, and in the case of a document within the proviso to section 115 also of the translation, and shall also enter an abstract or note of the document in such part of the volume of the register as relates to the land affected by such document.

Registration, how effected.
58 of 1959, s. 32.

(2) Every photostatic copy shall bear the number of the volume and folio in which the same is registered and the date of registration.

119. The registrar shall, immediately after registration, make and sign an endorsement thereof in the prescribed form on the document registered, and the filed photostatic copy thereof, and deliver the original to the person who presented it for registration, or his agent or representative.

Document when registered to be endorsed by registrar.
58 of 1959, s. 32.

120. The registrar may, upon such evidence as appears to him sufficient, subject to any rules made under this Act, correct errors and supply omissions in the register or in any entry therein, and may call in any outstanding instrument for that purpose.

Errors in register may be corrected.

121. (1) The registrar may at any time, after such inquiry and notices, if any, as he may consider proper, and upon production of such evidence as may be prescribed or as he may deem necessary, withdraw from the register by cancellation or otherwise any document or entry which he is satisfied has determined or ceased or been discharged, or for any other reason no longer affects or relates to land registered under this Part.

Cancellation of determined entries and destruction of documents.
58 of 1959, s. 33.

(2) The registrar may also direct the destruction of any document in his possession or custody which has become altogether superseded by any entry in the register, or has ceased to have any effect.

122. For the purpose of inquiries under this Act, the Principal Registrar and any registrar shall have power to cite and examine witnesses upon oath or affirmation, and to call for the production of any document material to the inquiry from the person having custody of the document.

Power of registrar to hold inquiry.

Appeals to High Court.
27 of 1961, Sch.

123. Every appeal to the High Court under this Part shall be dealt with and disposed of in such manner as the Chief Justice shall, by rules of court, prescribe.

Certified copy of Government grants, etc., admissible in evidence.

124. (1) A copy of any conveyance, lease or licence from the Government registered in the registry, certified to be a true copy under the hand of a registrar, shall be admissible in evidence of its contents in all courts.

(2) In the event of the loss or destruction of any document registered under this Part, a copy certified under the hand of a registrar shall be admissible in evidence as to its contents in all courts.

Certified copy of entry in register to be evidence.

125. Every certified copy of any entry in the register, purporting to be signed by a registrar, shall be receivable in evidence in any case without further or other proof thereof, unless it is alleged to be a forgery.

Registrar not to be liable for anything done in good faith.

126. A registrar or a person acting under his orders shall not be liable to any action, suit or proceeding for or in respect of any matter done or omitted to be done in good faith under this Act.

Searches.
58 of 1959, s. 34.

127. Any person desiring information may apply either—

- (a) in person at the registry and, on completion of the prescribed form and on payment of the prescribed fee, may inspect the register relating to the title of documents mentioned in the form; or
- (b) by post on the prescribed form and on payment of the prescribed fee, and the registrar shall then complete and return to the applicant a postal search certificate limited to the matters mentioned in the form.

Fees.

128. (1) Nothing in this Act contained shall make it obligatory on a registrar to do any act or permit any act to be done in respect of which a fee is prescribed, except on payment of the fee.

(2) The Principal Registrar may, in special cases and with the consent of the President, remit or reduce any of the prescribed fees.

Application of Cap. 285.

129. The Registration of Documents Act shall not apply to any document registrable under this Part; but if any document relates both to land registered under this Part and to other land, the document shall be registered under this Act and also under the Registration of Documents Act.

PART XI—MISCELLANEOUS PROVISIONS

(1) *Legal Procedure, Etc.*

130. (1) When any person without right, title or licence, or whose right, title or licence has expired or been forfeited or cancelled, is in occupation of unalienated Government land, the Commissioner or some person appointed by him in writing may enter a suit in any court of competent jurisdiction to recover possession thereof.

Recovery of Government lands in unlawful occupation. 39 of 1968, Sch.

(2) If on the hearing of a plaint under this section the defendant does not appear, or appears but fails to establish to himself an absolute right or title to the possession of the land, the court shall order that possession of the land sought to be recovered be given by the defendant, either forthwith or on or before such a day as the court thinks fit to name, and that the defendant do pay the costs; or, if it is shown, by or on behalf of the plaintiff to the satisfaction of the court hearing the plaint, that the title under which the defendant claims has, as between himself and the Republic of Kenya, expired or been forfeited or cancelled, the court shall declare the title to be extinguished, and may order that possession of the land sought to be recovered be given by the defendant to the plaintiff, either forthwith or on or before such a day as the court thinks fit to name, and that the defendant do pay the costs.

131. In any action, suit or proceedings against any person for or in respect of any alleged unlawful occupation of, use of or trespass upon any unalienated Government land, the proof that the occupation or use in question was authorized by the provisions of this Act, or of any other Act or law, or of any order, regulation or rule made in pursuance thereof, shall lie on the defendant, and in every such action, suit or proceeding and in any action by or against the Government in which title to land is in issue the averment that any land in question is unalienated Government land shall be sufficient without proof of such fact, unless the defendant proves the contrary, and all maps, plans, licences, certificates and copies certified as true under the hand of the Commissioner or the Director of Surveys shall be sufficient evidence of their contents without production of original records, and without the personal attendance of such officers, or proof of their signatures.

Evidence in proceedings under Part. 21 of 1953, s. 24, 39 of 1968, Sch.

132. In any action, suit or proceeding to which the Government is a party, no right or title to the possession of land within such parts of Kenya as are at the commencement of this Act within the former Protectorate, claimed under and in accordance with Mohammedan law, shall be recognized as against the Government unless the person claiming such right or title not only establishes in himself such right or title but also proves to the satisfaction of the court that he or some predecessor in title was in possession or was entitled to possession of the land before the 14th December, 1895.

As to title claimed under Mohammedan law. 39 of 1968, Sch.

133 to 135. (*Repealed by 21 of 1968, s. 46.*)

Institution and
conduct of actions.
21 of 1968, s. 46.

136. (1) All actions, unless brought on behalf of the Government, for anything done under this Act shall be commenced within one year after the cause of action arose and not afterwards.

(2) Notice in writing of the action, and the cause thereof, shall be given to the defendant one month at least before the commencement of the action.

(3) In every action, the defendant may plead the general issue, and give this Act and the special matter in evidence at the trial to be had thereupon.

(4) No plaintiff shall recover in the action if tender of sufficient amends has been made before action brought, or if a sufficient sum of money has been paid into court by or on behalf of the defendant after action brought, together with the costs incurred up to that time.

Service of notice.
49 of 1960, s. 14.

137. A notice served personally on the person to be served or sent by registered letter to his last known address, or published once in the Gazette, shall be deemed to be good service for the purposes of this Act.

(2) Prohibitions and Offences

Offering money to
abstain from bidding
an offence.

138. Every person who directly or indirectly offers or proposes to accept or receive money or other valuable consideration as an inducement to abstain from bidding or competing as a purchaser or intending purchaser of Government land, or of any lease or licence of such land, advertised for sale by public auction, and whether or not the land or the lease or licence is actually put up for sale, shall be guilty of an offence and liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding six thousand shillings.

Actual receipt of
money therefor an
offence.

139. Every person who actually receives money or other valuable consideration for abstaining from bidding for or competing for the purchase of Government land or of a lease or licence of such land which has been advertised for sale by auction, and whether or not the land or the lease or licence is actually put up for sale, shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding fifteen thousand shillings.

Penalty for false
declaration.

140. Any person who, in any declaration made or subscribed under or for any purpose of this Act, makes any statement which is false and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made, used or required, shall be guilty of an offence

and liable to imprisonment for a term not exceeding three years or to a fine not exceeding six thousand shillings or to both.

141. (1) The Commissioner, or any person authorized by him in writing in that behalf, may at all reasonable times and after giving reasonable notice (save as hereinafter provided) enter with any necessary assistants, servants, conveyances and appliances upon any land or premises sold, leased or occupied under licence, and may do all such acts thereon as are necessary or incidental to the exercise of the powers or the performance of the duties granted or imposed by this Act, or as may be prescribed in any grant under this Act or the Crown Lands Ordinance, 1902:

Power to enter land in execution of duty. 21 of 1953, s. 25.

21 of 1902.

Provided that a valuer or land ranger duly appointed and authorized under section 5 entering such land or premises between sunrise and sunset shall not be required to give such notice, but shall, if required by the owner or occupier thereof, produce and show the authority under which he claims to enter or has entered such land or premises.

(2) Whenever the exercise or performance of the powers or duties referred to in subsection (1) renders it necessary or desirable so to do, the Commissioner or his duly authorized officers shall be empowered together with his or their other assistants, servants, conveyances and appliances as aforesaid to go upon and encamp on any uncultivated site, not being within one quarter of a mile of a dwelling house, on or in the vicinity of the land or premises in respect of which the powers or duties are being exercised or performed, and shall be allowed access with their servants to the nearest available source of potable water.

(3) A person who wilfully obstructs, interferes with or impedes any officer or person in the exercise of his powers under this section, or in the performance of his duties, shall be guilty of an offence and liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding three months or to both.

142. A person who unlawfully occupies unalienated Government land, in any manner whatsoever, shall be guilty of an offence and liable to a fine not exceeding one thousand five hundred shillings.

Penalty for unauthorized occupation of unalienated Government land. 39 of 1968, Sch.

143. A person who, without the authority of the Commissioner, deposits or causes to be deposited upon unalienated Government land any rubbish, refuse, offal, manure, earth or any matter whatsoever, whether rubbish or otherwise, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings, and all expenses incurred in

No rubbish to be deposited on unalienated Government land. 58 of 1959, s. 35, 39 of 1968, Sch.

the removal of such matter may be recovered from that person as a civil debt recoverable summarily upon the complaint of the Commissioner.

Penalty for obstructing roads and ways.
39 of 1968, Sch.

144. A person who, by materials of any kind, wilfully obstructs a road, street, highway or waterway on Government land, except by gates approved by the Minister, so as to hinder the free passage of any person, carriage or vessel thereon, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings, in addition to the expense of removal, and it shall be lawful for a magistrate, land ranger, police officer or person authorized in writing by any magistrate without a warrant forthwith summarily to remove and prevent every such obstruction, at the cost of the party causing the same.

Purchaser or lessee not to impound stock unless land fenced.

145. No purchaser or lessee of Government land, and no person occupying Government land under a licence or agreement to purchase, shall impound any stock trespassing upon the land, unless the land or the portion thereof trespassed upon was, at the date of the trespass, enclosed with a fence reasonably sufficient to keep out stock; but nothing in this section shall apply to any trespass knowingly or wilfully caused by the owner or person in charge of stock, or shall be deemed to affect or limit the provisions of the Animal Diseases Act.

Cap. 364.

(3) *Compensation and Arbitration*

Compensation and arbitration.

146. All claims for compensation in respect of any matter arising under this Act or any Act repealed by this Act shall, unless the sum to be paid is agreed upon between the person claiming and the Commissioner, be referred to arbitration.

Procedure in arbitration.
49 of 1960, s. 15,
4 of 1999, s. 64.

147. (1) Where it is provided by this Act or otherwise agreed that any dispute arising under this Act shall be referred to arbitration, then the reference shall be to the Land Arbitration Tribunal hereinafter established.

(2) There shall be established a tribunal to be known as the Land Arbitration Tribunal which shall consist of five members appointed by the Minister as follows—

- (a) a chairman who shall be an advocate of the High Court of Kenya of not less than 15 years standing, appointed by the Minister from a list of not more than ten nominees proposed by the Law Society of Kenya at the request of the Minister:
- (b) two persons one of whom shall be a valuer registered under the Valuers Act (Cap. 532) and the other an estate agent registered under the Estate Agents Act (Cap.533), of not less

than ten years standing.

(c) two persons who shall be prominent businessmen of not less than twelve years standing; and

(d) one person who shall be a prominent farmer of not less than 12 years standing.

(3) Each of the persons specified in the foregoing under paragraphs (b), (c) and (d) of subsection (2) shall be appointed by the Minister from lists of Nominees submitted to him at his request, by such bodies as are for the time being recognised by the Government as being representative of the professions, occupations or interests respectively specified.

(4) The Minister shall appoint a secretary and such other officers of the Tribunal as may be appropriate.

(5) The quorum of any meeting of the Tribunal shall be three members of whom one shall be the chairman and one shall be a registered estate agent or valuer and the third shall, where the land which is the subject matter of the reference is—

(i) agricultural land, be the prominent farmer;

(ii) residential, commercial or industrial, be the businessman; and

(iii) is of any other user, be any one of the remaining members.

(b) During the illness or temporary absence from Kenya of the chairman or any other member of the Tribunal, the Minister may—

(i) in the case of the chairman, nominate any of the advocates proposed under subsection (2) (a) to act as temporary chairman; and

(ii) in the case of any other member, nominate a person qualified under paragraphs (b), (c) or (d) of subsection (2) to be a temporary member of the Tribunal.

(6) A member of the Tribunal shall hold office for a period of three years and shall be eligible for reappointment for a further term of three years.

(7) A member of the Tribunal may—

- (a) at any time resign from office by notice in writing addressed to the Minister;
- (b) be removed from office by the Minister if such member—
 - (i) has been absent from three consecutive meetings of the Tribunal without permission from the chairman;
 - (ii) is adjudged bankrupt or enters into a composition scheme of arrangement with his creditors;
 - (iii) is convicted of an offence involving fraud or dishonesty;
 - (iv) is incapacitated by prolonged physical or mental illness; or
 - (v) is otherwise unable or unfit to discharge his functions.

(8) The Tribunal may, in any reference pending before it in which a question may arise requiring any special skill or knowledge regarding the use to which the land concerned is being put appoint one or more competent assessors to attend and assist the Tribunal accordingly.

(9) Every assessor shall be summoned in such manner as the Tribunal may direct, and shall receive such fees for attendance as the Minister may direct.

(10) The members of the Tribunal shall not be personally liable for any act or default of the Tribunal done or committed in good faith in the course of exercising the powers conferred by this Act.

(11) Where a reference to the Tribunal falls within the provisions of section 75 (2) of the Constitution, the party dissatisfied with the decision of the Tribunal may appeal to the High Court in the manner prescribed in the Constitution on any of the grounds of the reference to the Tribunal and on any of the following grounds namely—

- (a) that the decision of the Tribunal was contrary to law or to some usage having the force of law;
- (b) that the decision failed to determine some material issue of law or usage having the force of law; or

(c) that a substantial error or defect in the procedure provided by or under this Act has produced an error or defect in the decision of the case upon its merits.

(12) A party to an appeal to the High Court under subsection (11) who is dissatisfied with the decision of the court thereon may appeal to the Court of Appeal on a question of law.

(13) Every party shall pay his or its costs of the reference, and the costs of and incidental to the appointment of an assessor or assessors shall be paid equally by the parties to the arbitration.

(4) *Rules and Saving*

148. (1) Whenever in any section of this Act the word “prescribed” is used in connexion with any matter referred to in the context, the Minister may make rules for the purpose of giving effect to the provisions of that section.

Rules.
21 of 1953, s. 27,
58 of 1959, s. 36,
39 of 1968, Sch.

(2) The Minister may make rules generally for the better carrying out of the provisions of this Act, and, without prejudice to the generality of the foregoing power, those rules may make provision—

(a) for prescribing fees for any document or thing issued or done under the authority of this Act;

(b) for prescribing the form of and the condition and mode of applying for land or for licences and leases to be issued under this Act;

(c) for providing for all proceedings, forms of leases, licences and other instruments, and for the execution of all other matters and things arising under and not inconsistent with this Act and not herein expressly provided for;

(d) for the care, management and protection in every manner of all unoccupied Government lands;

(e) for prescribing the fees and charges which shall be levied in respect of any act, matter or thing to be done by a registrar or in the registry, and generally for the better carrying out of the purposes of Part X of this Act;

(f) for prescribing or regulating any matter or thing in relation to any sale, lease, licence or agreement under the Crown Lands Ordinance, 1902, or anything done or to be done under that Ordinance which might lawfully have been prescribed under that Ordinance.

21 of 1902.

(3) Any rules under this Act may provide for their enforcement by penalties not exceeding in any case one thousand five hundred shillings.

Saving respecting
Ordinance.
21 of 1902.
21 of 1953, s. 28,
49 of 1960, s. 12,
L.N. 559/1962.

149. (1) So far as consistent with this Act, the repeal of the Crown Lands Ordinance, 1902,* shall not affect—

- (a) the past operation of that Ordinance;
- (b) any agreement, lease or licence heretofore granted or agreed to be granted under that Ordinance;
- (c) any estate, right, title, interest, power, duty, obligation, liability or burden of proof created or imposed by or acquired or exercisable under that Ordinance in respect of or under or in relation to such agreement, lease or licence;
- (d) anything lawfully done or commenced or agreed or authorized to be done under or in pursuance of that Ordinance in respect of or under or in relation to any such agreement, lease or licence;
- (e) any divisions, exchanges, proclamations, reservations, rules, grants, appointments, payments, surveys, surrenders, disabilities, acts, proceedings, matters and things lawfully made, had, done, created or authorized by, under or in pursuance of that Ordinance.

(2) All the matters and things mentioned in the several paragraphs of subsection (1) are, so far as consistent with this Act, hereby preserved and continued and declared to be of the same force and effect as if the Ordinance were still in force, or as if they were under this Act, as the case may require.

(3) Notwithstanding anything contained in subsections (1) and (2), or in any grant, lease or licence under the Crown Lands Ordinance, 1902—

- (a) land sold under that Ordinance shall not be liable to forfeiture under section 9 of that Ordinance;
- (b) instead of section 23 of that Ordinance, sections 86 to 90 (inclusive) of this Act shall apply in relation to entry upon land comprised in any such grant, lease or licence;
- (c) paragraph (d) of section 14, and sections 24 to 29 (inclusive), of that Ordinance shall cease to have effect;

*The Crown Lands Ordinance, 1902, was repealed by this Act. For the sake of convenience, it is produced immediately after this Act.

(d) where any grant, lease or licence incorporates, by reference thereto, any of the provisions of sections 24,25 and 26 of that Ordinance, the rights conferred on the Commissioner by those provisions shall not be exercisable.

(4) Except where otherwise provided, all offences committed, and penalties, forfeitures and liabilities incurred, before the commencement of this Act, or which may hereafter be committed or incurred, in respect of any matter or thing under or against the Crown Lands Ordinance, 1902, may be tried, punished, inquired into and enforced as if that Ordinance were still in force.

(5) All fees chargeable under the Crown Lands Ordinance, 1902, shall, until other provision is made, continue to be payable for the like matters done under this Act.

(6) Whenever in any Act, regulations, rules, proclamation or document any reference is made to the Crown Lands Ordinance, 1902, such reference shall be read and construed as if this Act had been included in that reference.

FIRST SCHEDULE

(ss.32 and 33)

1. The nature and value of improvements to be effected and maintained on land leased for agricultural purposes are—

Area of farm	Minimum value of improvements to be effected within first 3 years of the lease	Nature of improvement	Value of additional improvements to be effected within first 5 years of the lease	Nature of additional improvements
(a) 300 acres or under	Sh. 20 per acre, with a minimum of Sh. 600	Permanent	Sh. 10 per acre, with a minimum of of Sh. 300	Permanent
(b) Over 300 acres	(i) Sh. 6,000	Permanent	(i) Sh. 3,000	Permanent
	(ii) in addition Sh. 4 per acre in respect of every acre over 300 acres	Permanent and/or non - permanent	(ii) in addition Sh. 2 per acre in respect of every acre over 300 acres	Permanent and/or non-permanent

FIRST SCHEDULE —(Contd.)

2. For the purposes of this Schedule, “permanent improvement” means—

farm buildings of all descriptions	laying out and cultivating gardens and nurseries
fencing	water boring
water furrows	water races
planting trees or live hedges	sheep or cattle dips
walls	embankments or protective works of any kind
wells	
draining land or reclamation of swamps	planting of long-lived crops
road-making	water tanks
bridges	irrigation works
clearing of land for agricultural purposes	fixed machinery
	reservoirs
	dams of a permanent nature:

Provided that in estimating the value of improvements there shall be excluded the value of any dwelling-house which is not occupied by the lessee or by some person employed by the lessee in connexion with his operations on the land leased.

3. For the purposes of this Schedule, “non-permanent improvement” means—

livestock
 agricultural implements and machinery, and all apparatus and plant used in farming operations on the land leased
 dairy appliances,

provided—

(a) the stock, implements or other article or thing above mentioned is the property of the lessee; and

(b) the lessee or his manager or agent, if so required by the Commissioner or a land ranger, makes and signs a declaration that such stock, implement or other article or thing is the property of the lessee.

SECOND SCHEDULE

(s. 83)

Schedule of minerals referred to in subsection (4) of section 83—

clay, other than kaolin	shale
country rock	shingle
gravel	slate
lime	surface salt.
sand	

THIRD SCHEDULE

(s. 83)

Schedule of the minerals which may be used by purchasers, lessees and licensees subject to the provisions of subsection (6) of section 83—

salt	nitrate of soda
carbonate of soda	sulphate of ammonia.

FOURTH SCHEDULE

43)

KIBERA SETTLEMENT AREA

An area of land of approximately 550 acres adjoining Kibera Station reserve in the City of Nairobi and lying on both sides of the 200 ft. wide railway reserve of the main Nairobi-Nakuru line. The boundaries of the Kibera Settlement Area are described as follows:—

Commencing at the intersection of the centre line of the Motoine River with the north-eastern boundary of the Ngong Road Forest;

thence north-westerly by that forest boundary on a true bearing of 334° 35' 00" for a distance of approximately 1,610 ft. to a beacon BSI at the easternmost corner of L.R. No.7710;

thence continuing north-westerly by the north-eastern boundaries of L.R. No.7710 and 9141 on the same true bearing of 334° 35' 00" for a distance of 2,158.16 ft. to a beacon MBX;

thence easterly by a straight line on a true bearing of 88° 08' 07" for a distance of 7,338.53 ft. to a beacon T5 at the westernmost corner of L.R. No. 209/4202;

thence south-easterly by the south-western boundary of L.R. 209/4202 on a true bearing of 164° 05' 41" for a distance of 1,183.07 ft. to a beacon T7a on the northern boundary of the railway reserve, and continuing by the same true bearing of 164° 05' 41" for a distance of 95.62 ft. to a beacon T7;

thence on a true bearing of 145° 05' 53" for a distance of 109.19 ft. to a beacon T7b on the southern boundary of the railway reserve;

FOURTH SCHEDULE—(Contd.)

thence south-easterly by the south-western boundary of L.R. No. 209/4204 continuing on the same true bearing of 1450 05' 53" for a distance of 848.68 ft. to a beacon T9;

thence continuing south-easterly by the same boundary of L.R. No. 209/4204 on a true bearing of 1320 17' 05" for a distance of 681.82 ft. to a beacon T10b at the southernmost corner of that portion;

thence by a straight line due south for a distance of approximately 1,770 ft. to its intersection with the centre line of the Motoine River;

thence generally north-westerly and westerly up-stream by the centre line of that river to the point of commencement;

Excepting nevertheless from the above area the 200 ft. wide railway reserve of the main Nairobi-Nakuru line and the Kibera Station reserve.

The above boundaries are more particularly delineated, and the area cross-hatched yellow, on Boundary Plan No. 183/22 which is signed, sealed with the seal of Survey of Kenya and deposited at the Survey Records Office, Survey of Kenya, Nairobi.

21 of 1902.

THE CROWN LANDS ORDINANCE, 1902

(Reproduced for easy reference)

1. This Ordinance may be cited as the Crown Lands Ordinance, 1902.

2. All conveyances, leases and licences for the temporary occupation of Crown land made on behalf of His Majesty shall be made, and all proceedings, notices, and documents under this Ordinance shall be taken or drawn, in the name of the Commissioner, and save as therein otherwise provided shall be deemed to be made under and subject to the provisions of this Ordinance and of any rules for the time being in force under this Ordinance.

3. A conveyance, lease, or licence for the temporary occupation of Crown land under this Ordinance shall not confer any right to minerals in or under the said land, or to the waters of any river or lake.

Sales

4. The Commissioner shall not sell to any purchaser more than 1,000 acres of Crown land in one lot without the approval of the Secretary of State, but nothing herein shall invalidate any sale.

5. (1) Where an agreement has been entered into for the sale of Crown land and the portion of the price therein mentioned paid the land shall vest in the purchaser, but the Commissioner shall have a lien on the land for the balance of the purchase money.

(2) If the balance of the purchase money is not paid within six months from the date of the agreement, or within such other period as may be specified in the agreement, the land shall revert to the Commissioner, and all money paid shall be forfeited.

(3) No purchaser of Crown land shall be entitled to a conveyance until the whole of the purchase money has been paid.

6. The Commissioner may require a purchaser of Crown land to erect reasonable boundary-marks. If any purchaser of Crown land under the Ordinance fails to erect such boundary-marks as may be prescribed, the Commissioner may direct their erection, and may recover the cost of their erection from the purchaser.

7. Any purchaser of Crown land who fails to maintain, and any person, whether the owner of the land or not, who moves, or attempts to move, or in any way tampers with the boundary-marks of land purchased from the Crown, shall be guilty of an offence, and shall be liable to a fine not exceeding 1,000 rupees, or to two months' imprisonment of either kind, or both.

8. The Commissioner may at any time enter upon and view the state of any land sold under the provisions of this Ordinance.

9. (1) If any land sold under the provisions of this Ordinance appears to the Commissioner to have been unoccupied for a period exceeding twelve months, he may give notice that, if within the next six months the owner does not appear and afford reasonable proof that he intends to use and develop the land to a reasonable extent, the land will be forfeited.

(2) Such notice shall be published in the Gazette, and a copy shall be affixed to the land, and, if the address of the owner of the land is known, a copy shall be sent by post to him at that address.

(3) If the owner does not appear within the six months, or if, having appeared, he fails to afford reasonable proof that he intends to use and develop the land to a reasonable extent the Commissioner shall by notice in the Gazette declare the land forfeited, and the land shall thereupon revert to the Commissioner.

Leases

10. No lease of Crown land shall exceed ninety-nine years.

11. In the absence of special provision to the contrary contained in the lease, all buildings on Crown land leased, whether erected by the lessee or not, shall, on the determination of the lease, pass to the Commissioner without payment of compensation.

12. In every lease under this Ordinance there shall by virtue of this Ordinance be implied covenants by the Commissioner:—

- (a) That he has full power to grant the lease.
- (b) That the lessee, paying the rent and fulfilling the covenants therein contained, shall quietly hold and enjoy the premises without any lawful interruption by the Commissioner or any person claiming under him, except so far as the laws in force for the time being in the Protectorate may permit.

13. In every lease under this Ordinance there shall, by virtue of this Ordinance, be implied covenants by the lessee:—

- (a) That he will pay the rent or royalties thereby reserved at the time, and in the manner therein provided.
- (b) That he will pay any taxes or charges that may be imposed upon the land or on the buildings or huts thereon.
- (c) That he will allow the Commissioner, or any person acting under his directions or in virtue of his duties as a public officer of the Protectorate, to enter and view the land leased.

14. Except where expressly varied or excepted, there shall, by virtue of this Ordinance, be implied in every lease under this Ordinance covenants by the lessee:—

- (a) Not to assign, except by will, the land leased, or any part thereof, without the previous consent of the Commissioner.
- (b) To keep in reasonable repair all buildings erected before the commencement of and included in the lease.
- (c) To allow roads made by the lessee upon the land leased to be used for the public service.
- (d) *To permit travellers to encamp with their servants, animals, waggons and baggage, for a period not exceeding forty-eight hours, on any part of the land leased which is uncultivated, and which is not within a quarter of a mile of a dwelling-house, and to allow them access, with their servants and animals, to any river, stream or lake upon the land leased.
- (e) To use and develop the natural resources of the land leased with all reasonable speed, having regard to all the circumstances of the case.

15. In all building leases granted under this Ordinance there shall, by virtue of this Ordinance, be implied, unless such covenants are expressly varied or excepted, covenants by the lessee:—

- (a) To erect the buildings specified in the lease and in the manner and within the period therein provided.

* This paragraph has ceased to have effect by virtue of section 149 (3) (c) of the Government Lands Act.

- (b) To erect such buildings of good and substantial materials, having regard to all the circumstances.
- (c) To provide reasonable drainage and water supply, having regard to the situation and purpose of the building and the health of the neighbourhood.
- (d) To keep the buildings erected in good and substantial repair.
- (e) To deliver up the buildings in good and substantial repair on the determination of the lease.

16. In all leases under this Ordinance of areas of land for the purposes of agriculture or breeding or raising cattle, or for the growth of india-rubber, cotton, tobacco or other vegetable productions, or as a timber forest, there shall, by virtue of this Ordinance, be implied, unless such covenants are expressly varied or excepted, covenants by the lessee:—

- (a) To improve and develop the resources of the land in a prudent and business-like manner, and to abstain from the undue destruction or exhaustion of any timber, trees or plants for the sale or cultivation of which the land is leased.
- (b) That the lessee, his servants and agents, will not interfere with the settlements or villages of the natives, or with land allotted for native settlements or villages, and, so far as possible, will avoid all quarrels with the natives in or near the land leased.
- (c) To refer disputes between the lessee, his servants or agents, and the natives in villages or settlements in or near the land leased to the Collector of the district.

17. Every covenant, whether express or implied, in a lease under this Ordinance, which is binding upon a lessee, shall, unless it is otherwise provided in the lease, be binding upon all persons claiming an interest in the land leased whose title is derived through or under the lessee.

18.* (1) If the rent or royalties or any part thereof reserved in a lease under this Ordinance shall at any time be unpaid for the space of twenty-one days after the same has become due, or if there shall be any breach of the lessee's covenants, whether express or implied, the Commissioner may serve a notice upon the lessee specifying the rent or royalties in arrear or the covenant of which a breach has been committed, and at any time after one month from the service of the notice may commence an action in the High Court for the recovery of the premises, and, on proof of the facts, the High Court shall, subject to relief upon such terms as may appear just, declare the lease forfeited, and the Commissioner may re-enter upon the land.

(2) The notice shall either be served personally upon the lessee, or shall be published in the Gazette, and a copy thereof affixed to the premises.

*Powers of the Commissioner under this section delegated to the Commissioner of Lands (Cap. 155 (1948), Sub. Leg.)

19. For any breach of covenants by the Commissioner, whether express or implied, in a lease under this Ordinance, the lessee shall be entitled to commence an action for damages.

Licences for Temporary Occupation

20. (1) The Commissioner may issue licences to natives, or to such other persons, not being Europeans or Americans, as he may think fit, to occupy Crown land and to erect thereon a hut or huts or other temporary erection.

(2) A licence under this section shall not permit the occupation of more than five acres of land.

(3) Unless it is expressly provided otherwise, a licence under this section shall continue for one year and thenceforward until the expiration of any three months' notice to quit:

Provided that such notice to quit may be served upon the licensee at any time after the expiration of nine months from the date of the licence.

(4) The rent payable under any licence under this section shall be payable monthly, or at such other period as the licence shall provide.

(5) The benefit of a licence under this section may, with the consent of the Commissioner, be transferred by the licensee, and such transfer and the consent thereto shall be endorsed on the licence.

21. The occupant of any Crown land under a licence under section 20 may remove any hut or other building erected by him during his occupation of the land at any time before the licence expires.

22. If the rent payable under any licence granted under section 20 is unpaid for one month after it became due, or if any tax or taxes imposed upon the land, or upon the huts erected on the land, or upon the licensee, are unpaid for two months after they became due, or if the occupant of such land fails to keep the land in a reasonably clean condition, the Commissioner may eject the licensee from the land, and the licence shall be forfeited.

Compensation

23.* (1) The Commissioner may at any time enter upon any land sold or leased under this Ordinance, and there set up telegraph poles and place telegraph lines across such land, or may lay sewers, water-pipes, or electric lines therein, without paying compensation, but making good all damage.

(2) The Commissioner shall not be entitled under this section to interfere with any dwelling-house.

* By virtue of section 149 (3) (b) of the Government Lands Act, sections 86 to 90 of that Act now apply in place of this section.

24. † Where any sale or lease of land under this Ordinance transfers more than 100 acres the Commissioner may at any time hereafter enter upon such land and construct railways, canals and roads for the benefit of the public across such land without making compensation for the land, but compensation shall be payable for all buildings destroyed or damaged.

25. † Where any sale or lease of land under this Ordinance transfers less than 100 acres, the Commissioner may at any time hereafter enter upon such land and construct railways, canals and roads for the benefit of the public across such land, paying compensation for the land.

26. † The Commissioner may at any time hereafter enter upon any land sold or leased under this Ordinance, and there construct railway stations, sidings or any other public works, paying compensation for the land.

27. † (1) The Commissioner may at any time hereafter enter upon any land sold or leased under this Ordinance, and take therefrom stone and other materials for the making or repairing of roads, railways, canals or other public works.

(2) If the materials are taken from cultivated land, compensation shall be payable by the Commissioner, but not otherwise.

28. † The Commissioner may by writing under his hand authorize contractors, their servants and agents, to exercise the powers conferred upon him by sections 23-28 inclusive of this Ordinance.

General

29.* (1) Travellers shall be allowed to encamp with their servants, animals, waggons, and baggage, for a period not exceeding forty-eight hours, on any land purchased or leased from the Crown under this Ordinance, which is uncultivated, and which is not within a quarter of a mile of a dwelling-house, and shall be allowed access with their servants and animals to any river, stream, or lake upon the land.

(2) Any person refusing to allow travellers to encamp, or to have access to water, under this section, or interfering with travellers who are encamped, or any traveller refusing after request from the owner or lessee of the land to depart after the expiration of the forty-eight hours, or interfering in any way with the comfort or convenience of the owner or lessee of the land, shall be guilty of an offence, and shall be liable to a fine not exceeding 1,000 rupees or to imprisonment of either kind not exceeding two months or to both.

30. In all dealings with Crown land regard shall be had to the rights and requirements of the natives, and in particular the Commissioner shall not sell or lease any land in the actual occupation of the natives.

† These sections have ceased to have effect, by virtue of section 149 (3) (c) of the Government Lands Act.

*This section has ceased to have effect, by virtue of section 149 (3) (c) of the Government Lands Act.

31. (1) The Commissioner may grant leases of areas of land containing native villages or settlements without specifically excluding such villages or settlements, but land in the actual occupation of natives at the date of the lease shall, so long as it is actually occupied by them, be deemed to be excluded from the lease.

(2) The Commissioner may allot for the purpose of native settlements or villages portions of the land so leased, and when and so long as these portions are so occupied, they shall be deemed to be excluded from the lease.

(3) Any land within an area leased which has been in the occupation of natives shall, on ceasing to be so occupied, pass to the lessees.

(4) Disputes between lessees of land and natives occupying land within or near the area leased shall be referred to the Collector of the district.

(5) Claims by lessees for reduction of rent on account of diminution of the amount of land leased, or for other compensation on account of the exercise of the powers conferred by this section, and claims by the Commissioner for an increase of rent on account of the vacating of land formerly occupied by natives, shall be referred to the arbitration of a Judge of the High Court under section 525 of the Indian Code of Civil Procedure.

(6) Any doubts that may arise as to whether any land is or is not included in any native settlement or village, or in lands allotted for that purpose, shall be decided by the Collector of the district.

(7) Either the lessee of the land or the natives, if dissatisfied with the decision of the Collector, may appeal to the Sub-Commissioner of the province, whose decision shall be final.

32. (1) In all conveyances, leases and licences for the temporary occupation of Crown land, and in all agreements, notices and documents relating to such land, "Commissioner" shall include the holder of that office for the time being, a person duly appointed to act for him, and a person lawfully exercising for the time being the powers and authorities of that office.

(2) In this Ordinance, in all rules made hereunder, and in all conveyances, leases and licences for the temporary occupation of Crown land, and in all agreements, notices and documents relating to such land, "purchaser" and "lessee", unless it is otherwise specified, or unless the context otherwise requires, include personal representatives and assigns.

33. The Commissioner may make rules with regard to the following matters, and generally for carrying into effect the provisions of this Ordinance, and may apply such rules in whole or in part to the whole or to any district or districts of the Protectorate:-

- (a) The procedure to be followed in the case of applications for a conveyance, lease or licence for the temporary occupation of Crown land respectively.

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- (b) The officers by whom, and the manner in which, the powers conferred by this Ordinance shall be carried out.
 - (c) The survey of Crown land for a conveyance, lease or licence for the temporary occupation of which an application is made, and prescribing the fees to be paid for such survey by the applicant.
 - (d) The demarcation and maintenance of the boundaries of Crown land which is sold, let, or temporarily occupied under a licence.
 - (e) The procedure to be followed where land sold under the provisions of this Ordinance is forfeited under section 9.
 - (f) The procedure to be followed for the settlement and payment of compensation under this Ordinance.

34. The Commissioner may by rules under this Ordinance prescribe the forms of conveyances, leases, and licences for the temporary occupation of Crown land, and of all other documents or notices under this Ordinance, and from time to time may vary, change, or withdraw the prescribed forms:

Provided that nothing herein shall prevent the Commissioner from departing from the prescribed form in any particular instance.

35. The East Africa Land Regulations, 1897, are hereby repealed.