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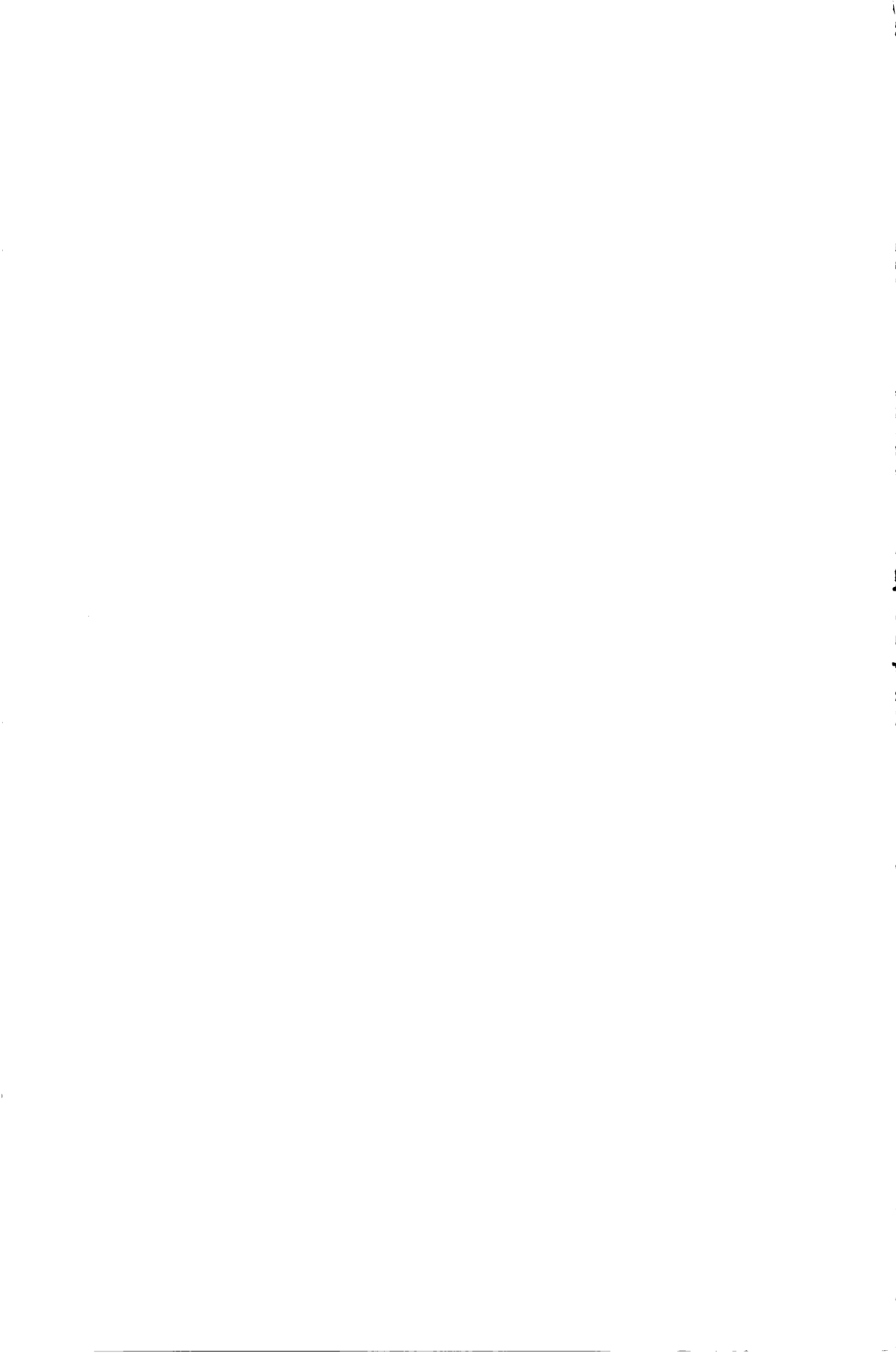
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THE COMMUNITY LAND ACT

No. 27 of 2016

Date of Assent: 31st August, 2016

Date of Commencement: 21st September, 2016

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SCHEDULE: Transitional Provisions

THE COMMUNITY LAND ACT, 2016

AN ACT of Parliament to give effect to Article 63 (5) of the Constitution; to provide for the recognition, protection and registration of community land rights; management and administration of community land; to provide for the role of county governments in relation to unregistered community land and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Community Land Act, 2016. Short title.

2. In this Act, unless the context otherwise requires— Interpretation.

“adjudication officer” means an officer appointed by the Cabinet Secretary under section 10(2);

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to land;

“cadastral map” has the meaning assigned to it under the Land Registration Act, 2012; No. 3 of 2012

“certificate of reservation” means a certificate issued in the interim by the Registrar pending the registration of community land and acquisition of the certificate of title;

“community” means a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes—

- (a) common ancestry;
- (b) similar culture or unique mode of livelihood;
- (c) socio-economic or other similar common interest;
- (d) geographical space;
- (e) ecological space; or
- (f) ethnicity.

“community assembly” means a gathering of registered adult members of a community convened in accordance with this Act;

“communal use of land” means holding or using land in undivided shares by a community;

“community land” means includes—

- (a) land declared as such under Article 63(2) of the Constitution;
- (b) land converted into community land under any law;

“community land register” means the community land register established under section 8 of the Land Registration Act, 2012; No. 3 of 2012

“community land registration unit” means an area declared as such under section 10 of the Land Registration Act;

“community of interests” means the possession or enjoyment of common rights, privileges or interests in land, living in the same geographical area or having such apparent association;

“community reserve land” means any land set aside for communal or land allocated by the registered community for individual occupation and use;

“community tenure system” means unwritten land ownership practices in certain communities in which land is owned or controlled by a family, clan or a designated community leader;

“Commission” means the National Land Commission established by Article 67 of the Constitution;

“county government” means the county government provided for under Article 176 of the Constitution;

“Court” means the Environment and Land Court established under the Environment and Land Court Act, 2011 or any other court having jurisdiction over land matters as may be prescribed by any written law; No 19 of 2011.

“customary land rights” refer to rights conferred by or derived from African customary law, customs or practices provided that such rights are not inconsistent with the Constitution or any written law;

“fragile ecosystem” means an ecosystem hosting threatened biodiversity;

“natural resources” has the meaning assigned to it in Article 260 of the Constitution;

“organised group” includes any or both formal and informal kinds of organization in the community setup;

“Principal Secretary” means the Principal Secretary for the time being responsible for matters relating to land;

“Registrar” means the Registrar of community land designated in accordance with section 9 of this Act;

“registered community” means a community that has completed the registration processes and is recognized under this law;

“spouse” has the meaning assigned to it under the Marriage Act, 2014;

No. 4 of 2014

“vested interest” means absolute and indefeasible ownership.

3. In the performance of the functions and exercise of powers under this Act, every person dealing with community land shall be guided by the following principles—

Guiding principles.

- (a) the principles of land policy set out in Article 60 of the Constitution; and
- (b) the national values and principles of governance set out in Article 10 of the Constitution.

PART II—RECOGNITION, PROTECTION AND REGISTRATION OF COMMUNITY LAND RIGHTS

4. (1) Community land in Kenya shall vest in the Community.

Ownership and tenure system.

(2) Subject to the provisions of this Act or any other written law, the State may regulate the use of community land in accordance with Article 66 of the Constitution.

(3) Community land shall vest in the community and may be held under any of the following tenure systems—

- (a) customary;
- (b) freehold;
- (c) leasehold; and

- (d) such other tenure system recognized under this Act or other written law.

5. (1) Every person shall have the right, either individually or in association with others, to acquire and own property, in accordance with Article 40 of the Constitution—

Protection of community land rights.

- (a) of any description; and
(b) in any part of Kenya.

(2) Customary land rights shall be recognized, adjudicated for and documented for purposes of registration in accordance with this Act and any other written law.

(3) Customary land rights, including those held in common shall have equal force and effect in law with freehold or leasehold rights acquired through allocation, registration or transfer.

(4) Subject to Article 40 (3) of the Constitution and the Land Act, no interest in, or right over community land may be compulsorily acquired by the State except in accordance with the law, for a public purpose, and upon prompt payment of just compensation to the person or persons, in full or by negotiated settlement.

(5) Subject to the provisions of section 46 of this Act, any person who immediately before the commencement of this Act had a subsisting customary right to hold or occupy land shall upon commencement of this Act continue to hold such right.

6. (1) County governments shall hold in trust all unregistered community land on behalf of the communities for which it is held.

Role of county governments.

(2) The respective county government shall hold in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land.

(3) Upon registration of community land, the respective county government shall promptly release to the community all such monies payable for compulsory acquisition.

(4) Any such monies shall be deposited in a special interest earning account by the county government.

No. 27

(5) The respective county government shall transfer the amount and the interests earned to the communities as may be prescribed.

(6) Any transaction in relation to unregistered community land within the county shall be in accordance with the provisions of this Act and any other applicable law.

(7) Upon the registration of any unregistered community land in accordance with this Act, the respective registered community shall, assume the management and administrative functions provided in this Act and the trustee role of the respective county government in relation to the land shall cease.

(8) A county government shall not sell, dispose, transfer, convert for private purposes or in any other way dispose of any unregistered community land that it is holding in trust on behalf of the communities for which it is held.

7. (1) A community claiming an interest in or right over community land shall be registered in accordance with the provisions of this section.

Procedure for registration of communities.

(2) The community land registrar shall by notice in at least one newspaper of nationwide circulation and a radio station of nationwide coverage, invite all members of the community with some communal interest to a public meeting for the purpose of electing the members of the community land management committee.

(3) The notice shall also be given to the national county administrators and county government administrators in the area where the community land is located.

(4) The community land registrar may use all available means of communication including electronic media to reach the community members.

(5) The community shall elect between seven and fifteen members from among themselves to be the members of the community land management committee as provided in section 15, who shall come up with a comprehensive register of communal interest holders.

(6) The community land management committee shall come up with the name of the community and shall submit the name, register of members, minutes of the meeting and the rules and regulations of the committee to the Registrar for registration.

8. (1) Subject to this Act and any law relating to adjudication of titles to land, the Cabinet Secretary shall, in consultation with the respective county governments, develop and publish in the Gazette a comprehensive adjudication programme for purposes of registration of community land.

Procedure for recognition and adjudication of community land.

(2) The Cabinet Secretary shall, in consultation with the county governments ensure that the process of documenting, mapping and developing of the inventory of community land shall be transparent, cost effective and participatory.

(3) The inventory of community land referred to in subsection (2) may be accessed by the county governments for ease of access by members of the community.

(4) The Cabinet Secretary shall issue a public notice of intention to survey, demarcate and register community land.

(5) The notice shall—

- (a) contain the name of the community;
- (b) state which land is to be adjudicated;
- (c) invite all interested persons with overriding interests or any other claim on the land, to lodge their claims;
- (d) specify an area or areas of land to be a community land registration unit; and
- (e) be for a period of sixty days.

(6) The Cabinet Secretary shall cause the land to be adequately surveyed but such survey shall exclude—

- (a) all parcels already in use for public purposes; and
- (b) adjudicated private land.

(7) A cadastral map of the land shall then be produced and presented to the Registrar for registration.

9. The Chief Land Registrar shall designate a qualified registrar to be the community land Registrar responsible for registration of community land.

Community land
Registrar.

10. (1) There shall be maintained for each registration unit, a community land register in accordance with section 8 of the Land Registration Act, 2012 in which shall contain—

Register of
community land.
No. 3 of 2012

- (a) a cadastral map showing the extent of the community land and identified areas of common interest;
- (b) the name of the registered community;
- (c) a register of members of the registered community which shall be updated annually;
- (d) the user of the land;
- (e) such particulars of members of the registered community as the Registrar may determine; and
- (f) any other requirement under this Act.

(2) The Registrar shall not register any instrument purporting to dispose of rights or interest in community land except in accordance with this Act or any other written law.

(3) For the avoidance of doubt, until any parcel of community land has been registered in accordance with this Act, such land shall remain unregistered community land and shall, subject to this Act, be held in trust by the county governments on behalf of the communities for which it is held pursuant to Article 63(3) of the Constitution.

11. (1) Community land shall be registered in accordance with the provisions of this Act and the Land Registration Act, 2012.

Registration of
community land.
No. 3 of 2012

(2) The Cabinet Secretary shall by a notice in the gazette, appoint an adjudication officer in respect of every community registration unit who shall—

- (a) facilitate in consultation with the respective county governments the adjudication of the community land including the recording of community land claims, demarcation of

community land and delineation of boundaries;
and

(b) perform any other function conferred by this Act.

(3) Upon adjudication, the title relating to community land shall be issued by the Registrar in the prescribed form.

12. Community land may be held—

Classes of holding
community land.

(a) as communal land;

(b) as family or clan land;

(c) as reserve land; or

(d) in any other category of land recognized under this Act or other written law.

13. (1) A registered community may by a resolution of the majority members of that community in a general meeting, reserve a portion of the community land for communal purposes.

Communal and
reserve land.

(2) Any land which has been used communally, for public purpose, before the commencement of this Act shall upon commencement of this Act be deemed to be public land vested in the national or county government, according to the use it was put for.

(3) A registered community may reserve special purpose areas including areas for—

(a) farming;

(b) settlement;

(c) community conservation;

(d) cultural and heritage sites;

(e) urban development; or

(f) any other purposes as may be determined by the community, respective county government or national government for the promotion or upgrading of public interest.

(4) An area reserved for special purposes under subsection (3) shall be used exclusively for the intended purpose.

14. (1) A customary right of occupancy in community land shall in every respect be equal in status and effect to a right of occupancy granted in any other category of land and shall, subject to this Act, be—

Confirmation of
validity of existing
customary rights of
occupancy.

- (a) capable of being allocated by the community to an individual person, family, group of persons, clan, an association, partnership or body corporate wholly owned by citizens of Kenya;
- (b) capable of being of indefinite duration; and
- (c) governed by customary law in respect of any dealings.

(2) A customary right of occupancy on any community land subsisting before the commencement of this Act shall upon the commencement of this Act be a recognisable right of occupancy in the respective community land subject to Article 40(6) of the Constitution.

(3) A person, a family unit, a group of persons recognized as such under any customary law or who have formed or organized themselves as an association, a co-operative society or any other body recognized by any written law, who are members of a community may apply to the registered community for customary right of occupancy.

(4) The registered community shall, when considering the application have regard to—

- (a) proposals made by the adjudication team or any sub-committee of the registered community set up for that purpose; and
- (c) equality of all persons including—
 - (i) equal treatment of applications for women and men; and
 - (ii) non-discrimination of any person on the basis of gender, disability, minority, culture or marital status.

(5) Upon approval by the registered community, the registered community shall issue a certificate of customary right of use and occupancy in the prescribed form.

PART III—ADMINISTRATION AND MANAGEMENT OF COMMUNITY LAND

15. (1) A registered community shall have a community assembly which shall consist of all adult members of the community.

Functions and powers
of the community land
management
committee.