

SPECIAL ISSUE

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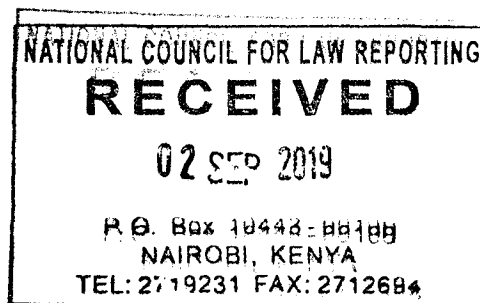
KENYA GAZETTE SUPPLEMENT

ACTS, 2019

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THE LAND VALUE (AMENDMENT) ACT, 2019

No. 15 of 2019

Date of Assent: 2nd August, 2019

Date of Commencement: 19th August, 2019

AN ACT of Parliament to amend the Land Act, the Land Registration Act and the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act; to provide for the assessment of land value index in respect of compulsory acquisition of land; and for connected purposes

ENACTED by Parliament of Kenya, as follows—

1. This Act may be cited as the Land Value (Amendment) Act, 2019.

Short title.

2. Section 2 of the Land Act is amended by inserting the following new definitions in their proper alphabetical order—

Amendment to section 2 of No. 6 of 2012.

“just compensation” in relation to compulsorily acquired land or creation of wayleaves, easements and public rights means a form of fair compensation that is assessed and determined through criteria set out under this Act;

“prompt” means within a reasonable time of, and in any case not more than one year after, the taking of possession of the land by the Commission;

“full” in relation to compensation for compulsorily acquired land or creation of wayleaves, easements and public rights of way means the restoration of the value of the land, including improvements thereon, as at the date of the notice of intention to acquire the land and any other matter provided for in this Act; and

“Tribunal” means the Land Acquisition Tribunal established under Part VIIIA.

3. Section 107 of the Land Act is amended—

Amendment to section 107 of No. 6 of 2012.

- (a) by inserting the following new subsection immediately after subsection (3)—

(3A) Where the Commission rejects a request of an acquiring authority in accordance with subsection (3), the Commission shall inform the relevant acquiring authority within fourteen days of the decision to reject the request.

- (b) by deleting subsection (4) and substituting therefor the following—

(4) If the Commission establishes that the request under subsection (1) meets the requirements prescribed under subsection (2) and Article 40(3) of the Constitution, the Commission shall—

- (a) cause the affected land to be mapped out and valued by the Commission using the valuation criteria set out under this Act; and
- (b) establish that the acquiring authority has identified the number and maintains a register of persons in actual occupation of the land, confirming for each such occupation how much time they have been in uninterrupted occupation or ownership of interest in the land prior to the date of the request for acquisition of the land, and the improvements thereon.
- (c) by inserting the following subsections immediately after subsection (5)—

(5A) The notice issued under subsection (5) shall contain the following particulars—

- (a) the purpose for which the land is to be compulsorily acquired; and
- (b) the location, general description and approximate area of the land.

(5B) Upon receipt of the notice under subsection (5), the Registrar shall make an order, pursuant to section 76 (1) of the Land Registration Act, 2012, prohibiting or

restricting dealings with the affected portion of land thereof until it vests in the acquiring authority.

- (d) in subsection (7) by deleting the expression “110 to 143” appearing after the word “sections” and substituting therefor the expression “107 to 133”.

4. The Land Act, 2012 is amended by inserting the following new section immediately after section 107—

Insertion of a new section 107A to No. 6 of 2012.

Criteria for assessing value for compulsorily acquired freehold land.

107A. (1) Valuation of freehold land and community land for purposes of compensation under this Act shall be based on the provisions of this Part and the land value index developed for that purpose by the Cabinet Secretary in consultation with county governments and approved by the National Assembly and the Senate.

(2) The land value index under subsection (1) shall be developed within six months of the commencement of this Act.

(3) For purposes of this Part, “land value index” means an analytical representation showing the spatial distribution of land values in a given geographical area at a specific time.

(4) In addition to any other principle that may be employed in calculating the land value index, the declared value of the land for purposes of payment of rates, rents or stamp duty shall be taken into account.

(5) In assessing the value of freehold land and determining the just compensation to be awarded for land acquired under this Act, an increase in the value shall be disregarded if—

- (a) the increase in the value of land is occasioned by the intended use or development of the land to be acquired;

- (b) the increase in the value of the land as at the date of publication of the notice of intention to acquire it is likely to accrue from the use to which the land will be put when acquired;
- (c) the increase in the value of the land is occasioned by any development or improvement to the land if—
- (i) the improvement was made on the land within two years prior to the date of publication in the *Gazette* of the notice of intention to acquire the land, unless it is proved that the improvement was made *bona fide* and not in contemplation of proceedings for the acquisition of the land:
- Provided that where the national government or the county government makes changes in the use of the land compulsorily acquired to affect other land owners, these owners shall be excluded from the application of this provision.
- (ii) the improvement was done after the date of publication in the *Gazette* of the notice of intention to acquire the land, unless the improvements were necessary for the maintenance of any building in a proper state of repair and are not capital improvements.
- (iii) the improvement is contrary to any law or is detrimental to the health of the occupiers or to public health generally.

(6) In addition to the provisions of subsection (1), the following circumstances shall not be taken into account in determining the value of the land—

- (a) the degree of urgency which has led to the acquisition;
- (b) any inconvenience caused to a person interested in the land; or
- (c) damage which is likely to be caused to the land after the date of publication in the *Gazette* of the notice of intention to acquire the land or in consequence of the intended land use;

(7) Despite subsections (1) and (3), the following matters may be taken into consideration in assessing the value of land—

- (a) damage sustained or likely to be sustained by persons interested at the time of the Commission's taking possession of the land by reason of severing the land from other land;
- (b) damage sustained or likely to be sustained by persons interested in the land at the time of the Commission's taking possession of the land injuriously affecting other property, whether movable or immovable or in any other manner affecting the person's actual earnings;
- (c) if, in consequence of the acquisition, any of the persons interested in the land is or will be compelled to change residence or place of business, the payment of reasonable expenses to be determined by the Commission;

- (d) damage genuinely resulting from diminution of the profits of the land between the date of publication in the *Gazette* of the notice of intention to acquire the land and the date the Commission takes possession of the land; and
- (e) the effect of any express or implied condition of title or law which restricts the intended land use.

(8) In determining the damage resulting from diminution of the profits of the land, the Commission shall require proof of existence of the profits including evidence of tax returns.

(9) For purposes of Article 40(4) of the Constitution, compensation to be made to occupants in good faith of land compulsorily acquired who may not hold title to the land shall be assessed based on—

- (a) the number of persons in actual occupation of the land for an uninterrupted period of six years immediately before the publication of the notice of intention to acquire the land;
- (b) improvements done before the date of publication in the *Gazette* of the notice of intention to acquire the land;
- (c) damage sustained or likely to be sustained by the occupants of the land at the time of the Commission's taking possession of the land injuriously affecting other property, whether movable or immovable or in any other manner affecting the person's actual earnings; and
- (d) if, in consequence of the acquisition, any of the occupants in good faith of the land is or will be compelled to change residence or

place of business, the payment of reasonable expenses to be determined by the Commission.

(10) An occupant in good faith does not include a person unlawfully occupying any land without the consent of the owner.

(11) The compensation payable under subsection (7) shall not in any case exceed the value of the structures and improvements on the land.

(12) Despite subsection (10), where boundaries of land are ascertainable, prompt payment in full, of just compensation may be made to occupants in good faith in the case of—

- (a) land lawfully held, managed or used by individuals or families as ancestral land; or
- (b) land traditionally occupied by individuals, families or entities pending adjudication.

(13) For the purposes of this section, “value” in relation to land means the value of the land, assessed in accordance with this section, at the date of publication in the *Gazette* of the notice of intention to acquire the land.

107B. (1) Where the lessee of a public land is in breach of any term or condition of the grant, the land shall revert back to the national or county government as provided for under this Act.

Criteria for assessing value for compulsorily acquired leasehold land.

(2) In assessing the value of the leasehold land and determining the just compensation to be awarded for land acquired under this Act, where the lessee of a public land has complied with all the conditions of the grant, the following matters shall be taken into consideration—

- (a) the value of the land based on the unexpired term of the lease calculated on the basis of a land value index developed for that purpose by the Cabinet Secretary in consultation with county

governments and approved by the National Assembly and the Senate;

- (b) the value of developments or improvements on the land and any other cost incurred on the basis of the terms and conditions of the grant; and
- (c) any other criteria which the Commission may prescribe in Regulations in consultation with the Cabinet Secretary and county governments and with the approval of the National Assembly and the Senate.

5. (1) Section 111 of the Land Act, 2012 is amended by inserting the following subsections immediately after subsection (1A)—

Amendment to
section 111 of
No. 6 of 2012.

(1B) Compensation for compulsorily acquired land may take any one or more of the following forms—

- (a) allocation of alternative parcel of land of equivalent value and comparable geographical location and land use to the land compulsorily acquired;
- (b) monetary payment either in lump sum or in instalments spread over a period of not more than one year;
- (c) issuance of government bond;
- (d) grant or transfer of development rights as may be prescribed;
- (e) equity shares in a government owned entity; or
- (f) any other lawful compensation

Provided that regardless of the form of compensation under this section, where an acquisition process is not completed within twenty-four months from the date of publication of the notice of intention to acquire the land, the acquisition shall lapse.

(1C) Subject to subsection (1B), an owner of land compulsorily acquired shall elect the form of compensation.

(1D) Compensation relating to compulsory acquisition shall not be paid to a public body unless there is a demonstrable inference that the land was purchased and developed by that public body.

(2) Section 111 of the Land Act, 2012 is amended in subsection (1A) by deleting the word “body” appearing immediately after the words “The acquiring” and substituting therefor the word “authority”.

6. Section 113 of the Land Act, 2012 is amended in subsection (2)(a)(iii) by deleting the word “amount” appearing immediately before the phrase “of the compensation” and substituting therefor the word “form”.

Amendment to section 113 of No. 6 of 2012.

7. Section 114 of the Land Act, 2012 is amended by deleting subsections (2) and (3).

Amendment to section 114 of No. 6 of 2012.

8. Section 115 of the Land Act, 2012 is amended by inserting the following new subsection immediately after subsection (2)—

Amendment to section 115 of the Principal Act.

(3) If the compensation payable in any of the cases referred to in paragraphs (a), (b) and (c) of subsection (1), is in the form of an alternative land, the Commission may hold the title to such land in trust for the beneficiaries.

9. Section 118 of the Land Act, 2012 is amended by renumbering the section as subsection (1) and inserting the following new subsection—

Amendment to section 118 No. 6 of 2012.

(2) Upon completion of final survey under subsection (1), the Commission shall cause to be issued new title documents for every affected parcel.

10. Section 120 of the Land Act, 2012 is amended—

Amendment to section 120 of the Principal Act.

(a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) After an award has been made, the Commission may take possession of the respective land by serving on every person interested in the land a notice that on a specified day possession of the land and the title to the land will vest in the national or county government as the case may be, provided that such taking of possession will not result in persons being rendered homeless.

(b) in subsection (2) by deleting the phrase “uncultivated or pasture or arable” appearing immediately after the words “possession of” and substituting therefor the article “the”.

11. Section 124 of the Land Act, 2012 is amended in subsection (3) by deleting the words “after paying full compensation”.

Amendment to section 124 of No. 6 of 2012.

12. Section 125 of the Land Act, 2012 is amended in subsection (1) by deleting the phrase “before taking possession,” appearing immediately before the word “pay”.

Amendment to section 125 of No. 6 of 2012.

13. The Land Act, 2012 is amended by inserting the following new Part immediately after Part VIII—

Insertion of new Part VIII A in No. 6 of 2012.

**PART VIII A—THE LAND ACQUISITION
TRIBUNAL**

Establishment of the Tribunal.

133A. (1) There is established a Tribunal to be known as the Land Acquisition Tribunal which shall consist of three persons appointed by the Cabinet Secretary through a notice in the *Gazette*.

(2) The members of the Tribunal shall consist of—

(a) one person nominated by the Judicial Service Commission, who shall serve as the chairperson;

(b) one person nominated by the Cabinet Secretary; and

(c) one person nominated by the Attorney-General.

(3) The Judicial Service Commission shall second a Deputy Registrar and such other staff members as are necessary to assist the Tribunal in the performance of its functions under this Act.

(4) The Tribunal may, co-opt an expert to advise it on any matter before it and shall regulate its own procedure.

(5) Members of the Tribunal shall be paid such allowances or other remuneration as the Judicial Service Commission may, on the advice of the Salaries and Remuneration Commission, determine.

Term of office for members.

133B. (1) The chairperson of the Tribunal is appointed for a term of four

years and is eligible for re-appointment for one more term of four years.

(2) A member of a Tribunal is appointed for a term of three years and is eligible for re-appointment for one more term of three years.

(3) A member of a Tribunal shall serve on part time basis.

Jurisdiction of the Tribunal.

133C. (1) The Tribunal has jurisdiction to hear and determine appeals from the decision of the Commission in matters relating to the process of compulsory acquisition of land.

(2) A person dissatisfied with the decision of the Commission may, within thirty days, apply to the Tribunal in the prescribed manner.

(3) Within sixty days after the filing of an application under this Part, the Tribunal shall hear and determine the application.

(4) Despite subsection (3), the Tribunal may, for sufficient cause shown, extend the time prescribed for doing any act or taking any proceedings before it upon such terms and conditions, if any, as may appear just and expedient.

(5) If, on an application to the Tribunal, the form or sum which in the opinion of the Tribunal ought to have been awarded as compensation is greater than the sum which the Commission did award, the Tribunal may direct that the Commission shall pay interest on the excess at the prescribed rate.

(6) Despite the provisions of sections 127, 128 and 148 (5), a matter relating to compulsory acquisition of land or creation of wayleaves, easements and public right of way shall, in the first instance, be referred to the Tribunal.

(7) Subject to this Act, the Tribunal has power to confirm, vary or quash the decision of the Commission.

(8) The Tribunal may, in matters relating to compulsory acquisition of land, hear and determine a complaint before it arising under Articles 23 (2) and 47 (3) of the Constitution, using the framework set out under the Fair Administrative Action Act or any other law.

Appeals.

133D. (1) A party to an application to the Tribunal who is dissatisfied with the decision of the Tribunal may, in the prescribed time and manner, appeal to the court on any of the following grounds—

- (a) the decision of the Tribunal was contrary to law or to some usage having the force of law;
- (b) the Tribunal failed to determine some material issue of law or usage having the force of law; or
- (c) a substantial error or defect in the procedure provided by or under this Act has produced error or defect in the decision of the case upon the merits.

(2) An appeal from the decision of the Tribunal may be made on a question of law only.

Limitation of liability for members of the Tribunal.

133E. Members of the Tribunal shall not be personally liable for any act or default done or committed in good faith in the course of exercising the powers conferred by this Act.

14. Section 146 of the Land Act, 2012 is amended in subsection (1) (b) by deleting the words “ninety days” appearing immediately after the words “at least” and substituting therefor the words “thirty days”.

Amendment to section 146 of No. 6 of 2012.

15. Section 157 of the Land Act, 2012 is amended by inserting the following subsections immediately after subsection (5)—

Amendment to section 157 of No. 6 of 2012.

(5A) Any person who, being a public officer—

(a) divulges any information on an intended land acquisition to any person before publication of the notice of the intention to acquire the land with an intention to influence any form of transaction for purposes of conferring any benefit as a result of the acquisition; or

(b) assists, facilitates, or in any way aids any transaction in such land contrary to any law,

commits an offence and upon conviction is liable, to a fine not exceeding five million shillings or to imprisonment not exceeding three years or to both the fine and imprisonment.

16. Section 76 of the Land Registration Act, 2012 is amended in subsection (1) by inserting the words “the purposes of compulsory acquisition” immediately after the word “For”.

Amendment to section 76 of Act No. 3 of 2012.

17. The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012 is amended by deleting section 22 and substituting therefor the following new section—

Amendment to section 22 of Act No. 56 of 2012.

Displacement occasioned by compulsory acquisition of land.

22. Internal displacement of persons resulting from a lawful compulsory acquisition of land subject to prompt payment in full, of just compensation to the persons shall not, for purposes of this Act, constitute arbitrary displacement.