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THE ENVIRONMENT AND LAND COURT ACT

CHAPTER 8D

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CHAPTER 8D

ENVIRONMENT AND LAND COURT ACT

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CHAPTER 8D

ENVIRONMENT AND LAND COURT ACT

[Date of assent: 27th August, 2011.]

[Date of commencement: 30th August, 2011.]

An Act of Parliament to give effect to Article 162(2)(b) of the Constitution; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction functions and powers, and for connected purposes

[Act No. 19 of 2011, Act No. 12 of 2012, Act No. 25 of 2015, Act No. 26 of 2015.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Environment and Land Court Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"Chief Justice" means the Chief Justice appointed under Article 166 of the Constitution;

"Chief Registrar" means the person holding the office of Chief Registrar established under Article 161(2) of the Constitution;

"Court" means the Environment and Land Court established under section 4 pursuant to Article 162(2)(b);

"environment" shall have the meaning assigned to it under the Environmental Management and Co-ordination Act (Cap. 387);

"Judge" means a person appointed in accordance with the provisions of Article 166(1)(b) of the Constitution;

"land" has the same meaning assigned to it by Article 260 of the Constitution;

"natural resources" has the same meaning assigned to it under Article 260 of the Constitution;

"Register" means the register where all pleadings and supporting documents and all orders and decisions of the Court are kept;

"Registrar" means the Registrar of the Environment and Land Court appointed under section 9;

"rules" means the rules made under section 24.

[Act No. 12 of 2012, Sch.]

3. Overriding objective

(1) The principal objective of this Act is to enable the Court to facilitate the just, expeditious, proportionate and accessible resolution of disputes governed by this Act.

(2) The Court shall, in the discharge of its functions under this Act give effect to the principal objective in subsection (1).

(3) The parties and their duly authorised representatives, as the case may be, shall assist the Court to further the overriding objective and participate in the proceedings of the Court.

PART II – ESTABLISHMENT AND CONSTITUTION OF THE COURT

4. Establishment of the Court

(1) There is established the Environment and Land Court.

(2) The Court shall be a superior court of record with the status of the High Court.

(3) The Court shall have and exercise jurisdiction throughout Kenya.

[Act No. 12 of 2012, Sch.]

5. Composition of the Court

The Court shall consist of the Presiding Judge and such number of Judges as may be determined by the Judicial Service Commission from time to time.

[Act No. 12 of 2012, Sch.]

6. Presiding Judge

(1) The Presiding Judge shall be elected in accordance with Article 165(2) of the Constitution.

(2) The Presiding Judge shall hold office for a non-renewable term of five years.

(3) The Presiding Judge shall have supervisory powers over the Court and shall report to the Chief Justice.

(4) In the absence of the Presiding Judge or in the event of a vacancy in the office of the Presiding Judge, the judges of the Court may elect any other Judge of the Court to exercise the functions of the Presiding Judge.

[Act No. 12 of 2012, Sch.]

7. Qualifications of and appointment of Judges of the Court

(1) A person shall be qualified for appointment as Judge of the Court if the person—

- (a) possesses the qualifications specified under Article 166(2) of the Constitution; and
- (b) has at least ten years' experience as a distinguished academic or legal practitioner with knowledge and experience in matters relating to environment or land.

(2) *Deleted by Act No. 12 of 2012, Sch.*

(3) The Chief Justice may, on the recommendation of the Judicial Service Commission, transfer a judge who meets the qualifications set out at sub-section (1) to serve in the court.

[Act No. 12 of 2012, Sch., Act No. 25 of 2015, Sch.]

8. Tenure of office of Judge of the Court

A Judge of the Court shall hold office until the Judge—

- (a) retires from office in accordance with Article 167(1) of the Constitution;

- (b) resigns from office in accordance with Article 167(5) of the Constitution;
- (c) is removed from office in accordance with Article 168 of the Constitution; or
- (d) is transferred from the Court to the High Court or other court with the status of the High Court.

[Act No. 25 of 2015, Sch.]

9. Registrar of the Court

(1) There shall be a Registrar of the Court appointed by the Judicial Service Commission under section 20 of the Judicial Service Act (Cap. 8A).

(2) Any administrative function of the Registrar may in the Registrar's absence, be performed by any member of staff of the Court authorized by the Judicial Service Commission.

[Act No. 12 of 2012, Sch.]

10. Qualification for appointment of the Registrar of the Court

A person shall not be qualified for appointment as the Registrar unless such person –

- (a) is an advocate of the High Court of Kenya, and has, since qualification –
 - (i) become eligible for appointment as a Judge of the High Court;
 - (ii) served for at least ten years as a professionally qualified magistrate; or
 - (iii) attained at least ten years' experience as a distinguished academic or legal practitioner or such experience in other relevant legal field; or
 - (iv) held the qualifications specified in paragraphs (i) to (iii) for a period amounting, in the aggregate, to ten years; and
- (b) has demonstrated competence in the performance of administrative duties for not less than three years.

[Act No. 12 of 2012, Sch.]

11. Functions of the Registrar of the Court

(1) The Registrar shall perform the duties assigned to the Registrar under this Act and such other duties as the Chief Registrar may direct, and in particular be responsible for —

- (a) the establishment and maintenance of the Registry of the Court;
- (b) the acceptance, transmission, service and custody of documents in accordance with the Rules;
- (c) facilitating the enforcement of decisions of the Court;
- (d) certifying that any order, direction or decision is an order, direction or decision of the Court, the Chief justice or a Judge, as the case may be;
- (e) the maintenance of the Register of the Court;
- (f) causing to be kept records of the proceedings and minutes of the meetings of the Court and such other records as the Court may direct;
- (g) managing and supervising the staff of the Court;

- (h) the day to day administration of the Court;
- (i) managing the library of the Court;
- (j) facilitating access to judgments and records of the Court;
- (k) undertaking any other duties assigned by Chief Registrar.

(2) In relation to the proceedings before the Court, the Registrar may consider and dispose of procedural or administrative matters in accordance with the Rules or on the direction of the Presiding Judge in charge.

[Act No. 12 of 2012, Sch.]

12. Review of the Registrar's decision

(1) Any person aggrieved by a decision of the Registrar on matters relating to judicial functions of the Court may apply for review by a Judge of the Court in accordance with the Rules.

(2) The Judge may confirm, modify or reverse the decision of the Registrar referred to in subsection (1).

PART III – JURISDICTION OF THE COURT

13. Jurisdiction of the Court

(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

(2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—

- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land;
- (c) relating to land administration and management;
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to environment and land.

(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.

(4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

(5) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—

- (a) interim or permanent preservation orders including injunctions;
- (b) prerogative orders;
- (c) award of damages;
- (d) compensation;
- (e) specific performance;

- (f) restitution;
- (g) declaration; or
- (h) costs.

[Act No. 12 of 2012, Sch.]

14. Enforcement of Court Orders

A judgement, award, order or decree of the Court shall be enforceable in accordance with the Civil Procedure Act (Cap. 21).

[Act No. 12 of 2012, Sch.]

15. The seal of the Court

The seal of the Court shall be such device as may be determined by the Court and shall be kept in the custody of the Chief Registrar.

[Act No. 12 of 2012, Sch.]

16. Appeals

Appeals from the Court shall lie to the Court of Appeal against any judgement, award, order or decree issued by the Court in accordance with Article 164(3) of the Constitution.

16A. Appeals from subordinate

(1) All appeals from subordinate courts and local tribunals shall be filed within a period of thirty days from the date of the decree or order appealed against in matters in respect of disputes falling within the jurisdiction set out in section 13(2) of the Environment and Land Court Act (Cap. 8D), provided that in computing time within which the appeal is to be instituted, there shall be excluded such time that the subordinate court or tribunal may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.

(2) An appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time.

[Act No. 25 of 2015, Sch.]

PART IV – PROCEEDINGS OF THE COURT

17.

[Deleted by Act No. 12 of 2012, Sch.]

18. Guiding principles

In exercise of its jurisdiction under this Act, the Court shall be guided by the following principles-

- (a) the principles of sustainable development, including;
 - (i) the principle of public participation in the development of policies, plans and processes for the management of the environment and land;
 - (ii) the cultural and social principles traditionally applied by any community in Kenya for the management of the environment or natural principles of natural justice resources in so far as the same are relevant and not inconsistent with any written law;
 - (iii) the principle of international co-operation in the management of environmental resources shared by two or more states;

- (iv) the principles of intergenerational and intragenerational equity;
- (v) the polluter-pays principle; and
- (vi) the pre-cautionary principle;
- (b) the principles of land policy under Article 60(1) of Constitution;
- (c) the principles of judicial authority under Article 159 of the Constitution;
- (d) the national values and principles of governance under Article 10(2) of the Constitution; and
- (e) the values and principles of public service under Article 232(1) of the Constitution.

[Act No. 12 of 2012, Sch.]

19. Procedure and powers of the Court

(1) In any proceedings to which this Act applies, the Court shall act expeditiously, without undue regard to technicalities of procedure.

(2) The Court shall be bound by the procedure laid down by the Civil Procedure Act (Cap. 21).

(3) *Deleted by Act No. 12 of 2012, Sch.*

(4) *Deleted by Act No. 12 of 2012, Sch.*

[Act No. 12 of 2012, Sch.]

20. Alternative dispute resolution

(1) Nothing in this Act may be construed as precluding the Court from adopting and implementing, on its own motion, with the agreement of or at the request of the parties, any other appropriate means of alternative dispute resolution including conciliation, mediation and traditional dispute resolution mechanisms in accordance with Article 159(2)(c) of the Constitution.

(2) Where alternative dispute resolution mechanism is a condition precedent to any proceedings before the Court, the Court shall stay proceedings until such condition is fulfilled.

21. Quorum of the Court

(1) The Court shall be properly constituted for the purposes of its proceedings under this Act by a single judge.

(2) Notwithstanding subsection (1), any matter certified by the Court as raising a substantial question of law —

- (a) under Article 165(3)(b) or (d) of the Constitution; or
- (b) concerning impact on the environment and land,

shall be heard by an uneven number of judges, as determined by the Chief Justice.

[Act No. 12 of 2012, Sch.]

22. Representation before the Court

A party to the proceedings may act in person or be represented by a duly authorised representative.

23. Language of the Court

(1) The language of the Court shall be English.

(2) In all appropriate cases, the Court shall facilitate the use by parties of indigenous languages, Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities.

(3) Where it is expedient and appropriate to do so, the Court may direct that proceedings be conducted and appearances be made through electronic means of communication, including tele-conferencing, video-conferences or other modes of electronic communication.

[Act No. 12 of 2012, Sch.]

24. Rules

(1) The Chief Justice shall make rules to regulate the practice and procedure of the Court.

(2) The Chief Justice shall make rules to regulate the practice and procedure, in tribunals and subordinate courts, on matters relating to land and environment.

(3) The Chief Justice shall in consultation with the Court make rules for the determination of admissibility by the Court of proceedings pending before any court or local tribunal.

(4) *Deleted by Act No. 12 of 2012, Sch.*

[Act No. 12 of 2012, Sch.]

PART V – MISCELLANEOUS PROVISIONS

25.

[Deleted by Act No. 12 of 2012, Sch.]

26. Sitting of the Court

(1) The Court shall ensure reasonable and equitable access to its services in all Counties.

(2) A sitting of the Court may be held at such places and at such times, as the Court may deem necessary for the expedient and proper discharge of its functions under this Act.

(3) The Chief Justice may, by notice in the *Gazette*, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.

(4) Subject to Article 169(2) of the Constitution, the Magistrate appointed under sub-section (3) shall have jurisdiction and power to handle —

- (a) disputes relating to offences defined in any Act of Parliament dealing with environment and land; and
- (b) matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrates' Courts Act.

(5) Appeals on matters from the designated magistrate's courts shall lie with the Environment and Land Court.

[Act No. 12 of 2012, Sch., Act No. 25 of 2015, Sch., Act No. 26 of 2015, s. 25.]

27. Regulations

The Court may make regulations for the better carrying out of its functions under this Act.

28.

[Deleted by Act No. 12 of 2012, Sch.]

29. Offences

Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.

[Act No. 12 of 2012, Sch.]

30. Transitional provisions

(1) All proceedings relating to the environment or to the use and occupation and title to land pending before any Court or local tribunal of competent jurisdiction shall continue to be heard and determined by the same court until the Environment and Land Court established under this Act comes into operation or as may be directed by the Chief Justice or the Chief Registrar.

(2) The Chief Justice may, after the Court is established, refer part-heard cases, where appropriate, to the Court.

31.

[Spent]

