

LEGAL NOTICE No. 146

LND.26/3/2/10)

THE LAND CONTROL (APPLICATIONS FOR CONSENT)
RULES, 1961
(L.N. 145 of 1961)

COMMENCEMENT

IN EXERCISE of the powers conferred by rule 1 of the Land Control (Applications for Consent) Rules, 1961, the Minister for Local Government and Lands hereby appoints 6th March, 1961, as the day upon which the Rules shall come into operation.

Dated this 3rd day of March, 1961.

W. B. HAVELOCK,
*Minister for Local Government
and Lands.*

LEGAL NOTICE No. 147

(LND.1/1/1)

THE KENYA (LAND) ORDER IN COUNCIL, 1960
(L.N. 589 of 1960)

By His Excellency Sir Patrick Muir Renison, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over the Colony and Protectorate of Kenya.

IN EXERCISE of the powers conferred by section 14 of the Kenya (Land) Order in Council, 1960, and of all other powers hereunto enabling me, I hereby make the following Regulations:—

THE LAND CONTROL (SPECIAL AREAS) REGULATIONS, 1961

PART I—PRELIMINARY

1. These Regulations may be cited as the Land Control (Special Areas) Regulations, 1961, and shall come into operation on the 16th day of March, 1961. Citation and commencement.

2. (1) In these Regulations, except where the subject or the context otherwise requires— Interpretation.

“division” means a division established under regulation 3 of these Regulations;

“land” means private land in the Special Areas, or any estate or interest therein;

“Minister” means the Minister for the time being responsible for land in the Special Areas;

“Order” means the Kenya (Land) Order in Council, 1960;

L.N. 589/60.

"race", in relation to any person, means the racial origin of that person, whether, that is to say, European, Asian, African, Arab or Somali.

(2) Save where a contrary intention appears, expressions used in these Regulations shall have the same respective meanings as they have in the Order.

No. 38 of 1956. (3) Subject to the foregoing provisions of this regulation the Interpretation and General Provisions Ordinance, 1956, shall apply for the purpose of interpreting these Regulations and any rules made thereunder as it applies for the purpose of interpreting an Ordinance and any rules made thereunder.

PART II—ESTABLISHMENT OF DIVISIONS

Establishment of divisions.

3. A Provincial Commissioner may divide any land in his province into such divisions as he may deem necessary for carrying out the provisions of these Regulations, or may declare all land in his province to be a division.

PART III—ESTABLISHMENT OF BOARDS

Divisional Boards.

4. (1) Upon the establishment of a division, there shall be established in respect thereof a Special Areas Divisional Land Control Board (in these Regulations referred to as a Divisional Board), consisting of—

- (a) a District Officer or other person appointed by the Provincial Commissioner, who shall be chairman;
- (b) not more than two public officers appointed by the Provincial Commissioner;
- (c) two persons appointed from amongst its members by the African District Council having jurisdiction in the division; and
- (d) such number of persons, being not less than six nor more than fifteen, as the Provincial Commissioner shall direct, elected in accordance with the provisions of paragraph (2) of this regulation:

Provided that the Provincial Commissioner may, if he thinks fit, direct that all or some of such persons shall be appointed by him and not elected, and in such case, and also where for any other reason the full numbers of persons who should be members under this subparagraph has not been elected, the Provincial Commissioner shall appoint such persons from among persons resident within the division.

(2) The election of members of a Divisional Board shall be held in such manner, and in respect of such geographical or other units, as the Provincial Commissioner may direct.

(3) The quorum of a Divisional Board, where the total number of members of the Board is an even number, shall be one-half of that number, and, where the total number of members is an uneven number, shall be one-half of the even number that is greater than that number by one.

(4) Notwithstanding the provisions of paragraph (1) of this regulation, if an African District Council fails to appoint two persons under subparagraph (c) of the said paragraph, or if all the members provided for by subparagraph (d) of the said paragraph have not been elected or appointed and, in the opinion of the Provincial Commissioner, a sufficient number of fit and proper persons is not available for appointment by the Provincial Commissioner to make up the number, the Provincial Commissioner may direct in writing that the Divisional Board shall consist of the persons appointed thereto under subparagraphs (a), (b) and (c) of the said paragraph, together with such persons, if any, as are elected or appointed under subparagraph (d) of the said paragraph.

5. (1) There shall be established for each province within which a Divisional Board has been established a Special Areas Provincial Land Control Board (in these Regulations referred to as a Provincial Board), consisting of—

Provincial
Boards.

(a) the Provincial Commissioner, who shall be chairman;

(b) not more than two public officers appointed by the Provincial Commissioner; and

(c) not less than ten, and not more than twenty-five, persons appointed by the Provincial Commissioner from persons nominated by the District Commissioner of each district within which a Divisional Board has been established.

(2) The quorum of a Provincial Board, where the total number of members of the Board is an even number, shall be one-half of that number, and, where the total number of members is an uneven number, shall be one-half of the even number that is greater than that number by one.

(3) Notwithstanding the provisions of paragraph (1) of this regulation, if, in the opinion of the Provincial Commissioner, a sufficient number of fit and proper persons is not available for appointment by the Provincial Commissioner to the Provincial Board under subparagraph (c) of the said paragraph, the Provincial Commissioner may direct in writing that the Provincial Board shall consist of himself and the person or persons appointed thereto under subparagraph (b) of the said paragraph, together with such persons, if any, as he has actually appointed, under subparagraph (c) of the said paragraph.

6. (1) The members of a Board shall hold office for such period as the Provincial Commissioner may direct.

Provisions
regarding
Boards.

(2) The Chairman shall preside at all meetings of a Board at which he is present; in the absence of the chairman from a meeting, the members present at the meeting shall elect one of themselves to preside at that meeting.

(3) In the event of an equality of votes, the chairman or other member presiding shall have a casting as well as an original vote.

(4) A Board shall not be disqualified for the transaction of business by reason of any vacancy in the membership thereof; and any proceedings thereof shall not be invalidated by the fact that some person who was not entitled to do so took part in the proceedings.

(5) In this regulation, "Board" means a Divisional Board or a Provincial Board.

PART IV—RESTRICTION ON LAND TRANSACTIONS

Restriction
on land
transactions.

7. (1) No person shall—

(a) sell, lease, charge, exchange, partition or in any way dispose of or deal with any land; or

(b) acquire any land (otherwise than by prescription) on behalf of himself or on behalf of any other person or of any company within the meaning of the Companies Ordinance; or

(c) subdivide any land; or

(d) sell, transfer or otherwise dispose of, in any manner whatsoever, any share, debenture or stock in any company which for the time being owns any land,

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unless consent thereto has been given under and in accordance with the provisions of these Regulations, and every such transaction or subdivision in respect of which such consent has not been given shall be absolutely void for all purposes:

Provided that nothing in this paragraph shall apply to—

(i) any transmission of land on the death of the owner, unless such transmission involves a subdivision of the land;

(ii) any sale or foreclosure decreed by the court under section 59 of the Land Registration (Special Areas) Ordinance, 1959;

(iii) any transaction or subdivision made by or in favour of the Crown, the Governor, the Government, the High Commission or any services administered by it or the Trust Land Board.

No. 27 of 1959.

(2) Any agreement for sale, lease, charge, exchange, partition or subdivision, or for any other transaction to which paragraph (1) of this regulation applies, shall become absolutely void for all purposes—

(a) at the end of three months after the making of the agreement, if application to the Divisional Board for consent thereto has not then been made; or

(b) if such application is made and is refused, at the end of the time (if any) allowed by these Regulations for appeal therefrom, or, where an appeal is made, on the dismissal of the appeal, or, where a further appeal lies under these Regulations, at the end of the time allowed by these Regulations for appeal, or, where such an appeal is made, on the dismissal thereof.

(3) If any money or other valuable consideration has been paid in the course of any transaction or subdivision, or under any agreement, which is or becomes void under this Regulation, such money or consideration shall be recoverable as a civil debt by the person who paid it from the person to whom it was paid.

8. Every person desiring consent to any transaction in land (which expression, where it appears hereafter in these Regulations includes the subdivision of land) shall make application in the prescribed form and manner to the Divisional Board concerned.

Mode of application.

9. Subject to any directions of the Provincial Board under paragraph (2) of regulation 11 of these Regulations, a Divisional Board shall determine all applications made to it under regulation 8 of these Regulations, and may give its consent to any transaction for which its consent is required under these Regulations, or may refuse to give its consent:

Powers of Divisional Boards.

Provided that a Divisional Board shall refuse to give its consent to a transaction—

(a) in respect of which it is directed by a Provincial Board under paragraph (2) of regulation 11 of these Regulations not to give its consent; or

(b) where the transaction, if effected, would infringe the provisions of section 66 of the Land Registration (Special Areas) Ordinance, 1959,

No. 27 of 1959.

and any consent given to such a transaction shall be absolutely void.

10. Any person aggrieved by the refusal of a Divisional Board to give its consent under these Regulations may, within thirty days of the date of the refusal, appeal in writing to the District Commissioner, stating the grounds of his appeal, and, upon payment of the prescribed fee, the District Commissioner shall—

Appeals against decisions of Divisional Boards.

(a) if satisfied that the Board's refusal is given under and in accordance with the proviso to regulation 9 of these Regulations, dismiss the appeal, and such dismissal shall be final and conclusive and shall not be questioned in any court; or

(b) if not so satisfied, refer the matter with a brief report of the circumstances to the Provincial Board.

11. (1) The Provincial Board shall hear and determine all appeals referred to it by the District Commissioner under regulation 10 of these Regulations, and, subject to the provisions of regulation 12 of these Regulations, the decision of the Provincial Board shall be final and conclusive and shall not be questioned in any court.

Powers of Provincial Boards.

(2) Subject to any general or special directions of the Governor, acting after consultation with the Trust Land Board, a Provincial Board may, in writing—

(a) after consulting the Divisional Board, give a general consent in respect of any class of transactions relating to land situated in any division within the province, or any part of any such division;

- (b) direct that a Divisional Board shall not give its consent to any transaction whereby any separate parcel of land would be created smaller or of a less frontage than such minimum area or frontage as the Provincial Board may specify, and the Provincial Board may specify different minima for different parts of a division;
- (c) direct that a Divisional Board shall not give its consent to any specified transaction or class of transactions;
- (d) direct that any application for consent to any specified transaction or class of transactions shall be referred to the Provincial Board for determination;

and the Provincial Board may at any time vary or revoke any general consent or direction given under this regulation.

(3) The Provincial Board shall determine all applications referred to it in pursuance of a direction given by it under subparagraph (d) of paragraph (2) of this regulation, and for the purposes of such determination shall have the same powers as are conferred by these Regulations upon a Divisional Board.

(4) Every general consent and every direction given by a Provincial Board under paragraph (2) of this regulation shall be given in writing and shall be signed by the chairman of the Board.

Appeal to Governor where parties are of different races or tribes.

12. Any person who is aggrieved by the refusal of consent to a transaction between persons of different races or of different tribes may, if the refusal is confirmed by the District Commissioner under regulation 10 or by the Provincial Board under paragraph (1) of regulation 11 of these Regulations, or if it is the refusal of a Provincial Board acting under paragraph (3) of regulation 11 of these Regulations, within thirty days after the date of confirmation or refusal, appeal in writing to the Governor, who shall hear and determine such appeal; and the decision of the Governor shall be final and conclusive and shall not be questioned in any court.

Reference to Governor in certain cases.

13. (1) If any general consent or direction, or any decision, of a Provincial Board in the exercise of its powers under paragraph (2) of regulation 11 of these Regulations, appears to the chairman of such Board to infringe any general or special direction of the Governor given under that paragraph, the chairman shall refer the matter to the Governor, who may revoke, vary or confirm such consent or direction, or may reverse, vary or confirm such decision, as the case may be; and the action of the Governor in this regard shall be deemed, for the purposes of these Regulations, to be the exercise by the Provincial Board of its powers aforesaid.

(2) If a Provincial Board fails to comply with any general or special direction of the Governor given under paragraph (2) of regulation 11 of these Regulations, the chairman shall refer the matter to the Governor, who may give any general consent or any direction to a Divisional Board, as he may think fit, and the same shall be deemed for the purposes of these Regulations, to have been given by the Provincial Board.

PART V—GENERAL

14. (1) Every decision of a Divisional Board, a Provincial Board, a District Commissioner or the Governor under these Regulations shall be given in writing, and shall be signed by the chairman of the Board, the District Commissioner or the Governor, as the case may be, and, where consent is refused, shall give the reasons for the refusal.

Decisions of Boards to be in writing.

(2) A Provincial Board shall send to the Divisional Board a copy of its decision on any appeal determined by it under paragraph (1) of regulation 11 of these Regulations.

15. (1) A Divisional Board or a Provincial Board may require the attendance before it of the applicant, or of any party to or person interested in or affected by the application, and may require the applicant to adduce evidence to its satisfaction as to the applicant's identity and as to the ownership of the land to which the application relates, and may require the production of any document or other evidence relating to the land.

Attendance before Boards.

(2) A Divisional Board or a Provincial Board may depute one or more of its members to visit and report on the land to which the application relates.

(3) Where any person whose presence is required under paragraph (1) of this regulation does not appear, or where any document whose production is required under the said paragraph is not produced, or where any report required under paragraph (2) of this regulation is not made, the Board may give such reasonable time as it may think fit for the appearance before it of such person or for the production of such document or for the making of such report.

(4) Any person who without reasonable excuse refuses or neglects to attend before a Divisional Board or a Provincial Board, or to produce a document, when required to do so under paragraph (1) of this regulation shall be guilty of an offence and liable to a fine not exceeding five hundred shillings.

16. Any member of a Divisional Board or a Provincial Board, and any person authorized in writing by such a Board, may, at all reasonable times, after giving reasonable notice, and on production of his authority to any person reasonably requiring the same, enter upon and inspect any land for the purpose of carrying out their functions under these Regulations.

Power to enter and inspect land.

17. The Registrar (as defined in section 4 of the Land Registration (Special Areas) Ordinance, 1959), shall refuse to register a document relating to a transaction in land unless he is satisfied that any consent required by these Regulations to be given in respect of the transaction, and, where the transaction is a transaction in a subdivision of land, in respect of the preceding subdivision, has been given, or that no consent is required thereto by these Regulations.

Registration of documents.

18. Any person who knowingly makes any false statement in any application or appeal under these Regulations, or who knowingly gives any false information to any person in the course of the determination of any application or appeal under these Regulations, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term of six months or to both such fine and imprisonment.

Penalty for false statement.

- Expenses. 19. There shall be defrayed out of moneys provided by the Legislature any expenses of the Minister under these Regulations.
- Transitional Provisions. 20. Notwithstanding the provisions of these Regulations—
- No. 28 of 1959. (a) the persons who, immediately before the commencement of these Regulations, were members of Divisional Native Land Control Boards and Provincial Native Land Control Boards established under the Land Control (Special Areas) Ordinance, 1959, shall be deemed to be members of the Divisional Boards and Provincial Boards respectively established under these Regulations and corresponding most closely thereto, and shall continue as such members until replaced under these Regulations;
- No. 28 of 1959. (b) any general consent and any direction given by a Provincial Native Land Control Board under section 11 of the Land Control (Special Areas) Ordinance, 1959, shall, on the commencement of these Regulations, be deemed to be a general consent or direction, as the case may be, given by the Provincial Board of the same province under regulation 11 of these Regulations.
- Saving of applications under Ordinance No. 28 of 1959. 21. Any application for consent duly made under section 7 of the Land Control (Special Areas) Ordinance, 1959 (hereby repealed), which at the coming into operation of these Regulations has not been finally determined under that Ordinance shall be deemed to be an application duly made under these Regulations to a Divisional Board and shall be determined in accordance with the provisions of these Regulations.
- Rules. 22. (1) The Minister may make rules generally for carrying into effect the intent and purposes of these Regulations.
- (2) Without prejudice to the generality of the provisions of paragraph (1) of this regulation, rules under this regulation may provide—
- (a) for the fixing of fees to be paid under these Regulations;
- (b) in consultation with the Treasury, for the payment of travelling and other expenses and subsistence allowances to members of any Board established under these Regulations (not being public officers);
- (c) for prescribing anything which under these Regulations may be prescribed.
- Repeal and amendment of Ordinances. No. 28 of 1959. No. 29 of 1956. 23. (1) The Land Control (Special Areas) Ordinance, 1959, is repealed.
- (2) Subsection (1) of section 23 of the Building Societies Ordinance, 1956, is amended by substituting for the words "the Land Control (Special Areas) Ordinance, 1959", which appear therein, the words "the Land Control (Special Areas) Regulations, 1961".

Made this 3rd day of March, 1961.

P. M. RENISON,
Governor.