

THE DISPOSAL OF UNCOLLECTED GOODS ACT, 1987

No. 3 of 1987

Date of Assent: 28th April, 1987

Date of Commencement: 8th May, 1987

ARRANGEMENT OF SECTIONS

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An Act of Parliament to provide for the disposal of goods deposited under certain contracts but not re-delivered; and for connected purposes

ENACTED by the Parliament of Kenya as follows:—

1. This Act may be cited as the Disposal of Uncollected Goods Act, 1987. Short title.
2. (1) In this Act, unless the context otherwise requires— Interpretation.

“contract” means a contract to which this Act applies in terms of section 3 (1);

“custodian” means a person with whom goods are deposited under a contract to which this Act applies, and includes his successors in title;

“depositor” means a person who deposits goods with another person under a contract to which this Act applies and includes his successors in title;

“goods” includes all movable property other than things in action and money;

“notice of intention to sell” means a notice under section 6;

“notice to take delivery” means a notice under section 5;

“owner” includes the owner’s successors in title;

“to take delivery of goods” includes, where the terms of the contract allow, to give directions for their delivery:

Application.

3. (1) This Act shall apply to goods in the possession or under the control of a custodian under a contract—

(a) to repair, treat or work on the goods;

(b) to value, survey or give an estimate relating to the goods;

(c) for custody or warehousing of the goods for reward;

(d) for carriage of the goods;

(e) for hire of the goods;

(f) for gratuitous deposit or gratuitous loan of the goods;

(g) for pawn of the goods,

or under any other contract of bailment, express or implied:

Provided that the application of the Act may be expressly modified or excluded by the terms of the contract.

Imposing
obligation to
take
delivery.

4. (1) For the purposes of this Act, a custodian may by notice given to the depositor impose on him an obligation to take delivery of the goods.

(2) This section shall apply whether or not—

(a) the depositor has paid any amount due to the custodian in respect of the goods; or

(b) the deposit is for reward, or in the course of business or gratuitous.

(3) This section and section 5 shall be without prejudice to the provision of any contract requiring the depositor to take delivery of the goods.

5. (1) Except where subsection (2), (3) or (4) applies notice to take delivery may be given at any time after a custodian has accepted goods.

Notice to
take
delivery.

(2) Where a custodian has accepted goods for repair, treatment or work on the terms, expressed or implied, that they will be re-delivered to the depositor when the repair, other treatment or work has been completed, notice to take delivery may be given at any time after the repair, treatment or work has been completed.

(3) Where a custodian has accepted goods for valuation, survey or estimate, notice to take delivery may be given at any time after the valuation, survey or estimate has been completed.

(4) Where the custodian's obligation as custodian has come to an end, notice to take delivery—

(i) may be given at any time after that obligation has ended; or

(ii) may be combined with a notice terminating that obligation.

(5) Subsection (4) does not apply to goods held by a person as a mercantile agent, that is a person who has in the regular course of his business as a mercantile agent authority—

(a) to sell goods;

(b) to consign goods for sale;

(c) to buy goods; or

(d) to raise money on the security of goods.

(6) Notice to take delivery shall be in accordance with the First Schedule and shall be given in accordance with the Third Schedule.

6. (1) Subject to subsection (3), where—

(a) a depositor is under an obligation to take delivery of goods, either in terms of the contract or imposed by the custodian in terms of sections 4 and 5 and the First Schedule;

(b) the depositor has not taken delivery by the date specified in the notice to take delivery.

Notice of
intention to
sell.

then the custodian may give the depositor notice of his intention to sell the goods.

(2) Notice of intention to sell shall be in accordance with the Third Schedule.

(3) If, because of a dispute in respect of the goods, the custodian has notice that the depositor disputes all or any part of the sum claimed by the custodian in respect of the goods—

- (a) the custodian may not give the depositor notice of his intention to sell the goods;
- (b) the custodian may not sell the goods as provided under section 7.

Sale of goods.

7. (1) If—

- (a) the custodian has given to the depositor a notice of intention to sell;
- (b) the specified date has been reached on or after which sale was proposed in terms of paragraph 1 (f) of the Second Schedule;
- (c) section 6 (3) does not apply;
- (d) the depositor has not taken delivery of the goods; and
- (e) the custodian is reasonably satisfied that the depositor owns the goods,

the custodian may, as against the depositor, sell the goods.

(2) The sale of the goods by the custodian must be made in good faith and he must take reasonable care to obtain the best price reasonable in the circumstances.

(3) A sale made in accordance with this section gives a good title to the purchaser as against the depositor :

Provided that if the depositor did not own the goods the sale does not give a good title as against the owner.

(4) A custodian who sells under this section is liable to account to the depositor for the proceeds of sale less—

- (a) any costs of sale; and
- (b) any sum payable by the depositor to the custodian in respect of the goods.

8. (1) Without prejudice to section 7, if a custodian satisfies the court that he is entitled to sell the goods under section 7, or that he would be so entitled if a dispute in respect of the goods had not, under section 6 (3), prevented him from giving notice of intention to sell the goods, the court—

Sale
authorized
by court.

- (a) may authorize the sale of the goods subject to any terms and conditions specified in the order of the court;
- (b) may authorize the custodian to deduct from the proceeds of sale—
 - (i) any costs of sale; and
 - (ii) any sum payable by the depositor to the custodian in respect of the goods; and
- (c) may direct the payment into court of the net proceeds of sale (being the proceeds of sale less any sums deducted under paragraph (b)) to be held to the credit of the depositor.

(2) A decision of the court authorizing a sale under this section is, subject to any right of appeal, conclusive as against the depositor of the custodian's right to sell the goods and gives a good title to the purchaser as against the depositor:

Provided that if the depositor did not own the goods the sale does not give a good title as against the owner.

9. The Minister may make regulations generally for the better carrying out of the objects and purposes of this Act including—

Regulations.

- (a) prescribing any matter which may be prescribed under this Act;
- (b) amending a Schedule.

10. The Law of Contract Act is amended in the Schedule by repealing the provision relating to the Disposal of Uncollected Goods Act, 1952 of the United Kingdom.

Consequential
repeal.
Cap. 23.

FIRST SCHEDULE

(s. 5 (6))

DETAILS OF NOTICE TO TAKE DELIVERY

A notice to take delivery shall be in writing and must—

- (a) state that it is given under this Act;

- (b) specify the name and address of the custodian;
- (c) give sufficient particulars of the goods to enable the depositor to identify them;
- (d) specify the address or place where the goods are held;
- (e) state that the goods are ready for delivery to the depositor, or where the notice is combined with a notice terminating the obligation as custodian, will be ready for delivery when that obligation ends;
- (f) specify the date (not being less than thirty days after the date on which notice to take delivery is given) before which the depositor is obliged to take delivery;
- (g) specify what sum, if any, is payable as at the date of notice by the depositor to the custodian in respect of the goods (which sum may include the cost of giving notice); and
- (h) state that if the depositor does not comply with the obligation to take delivery of the goods by the date specified under subparagraph (f) the custodian may start the proceedings for selling the goods under the Act.

SECOND SCHEDULE

(s. 7 (1))

DETAIL OF NOTICE OF INTENTION TO SELL

1. A notice of intention to sell shall be in writing and must—
 - (a) state that it is given under this Act;
 - (b) specify the name and address of the custodian;
 - (c) give sufficient particulars of the goods to enable the depositor to identify them;
 - (d) specify the address or place where the goods are held;
 - (e) specify the details of the notice to take delivery by which the obligation to take delivery was imposed;
 - (f) subject to paragraph 2, specify the date on or after which the custodian proposes to sell the goods without further notice to the depositor; and
 - (g) specify what sum, if any, is payable as at the date of the notice by the depositor to the custodian in respect of the goods (which sum may include the cost of giving notice).
2. The date on or after which the custodian proposes to sell the goods—
 - (a) shall be such as will give the depositor reasonable opportunity of not less than thirty days to take delivery of the goods; and
 - (b) if any sum is payable in terms of paragraph 1 (g), shall be not less than three months after the date on which notice of intention to sell is given.

THIRD SCHEDULE (s. 5 (5) and 6 (2))

GIVING OF NOTICES

1. Subject to paragraph 2, a notice to take delivery or a notice of intention to sell shall be given—

- (a) by delivering it by hand to the depositor;
- (b) by leaving it at the residence or place of business of the depositor; or
- (c) by registered post, addressed to the last known postal address of the depositor.

2. If a custodian has attempted to give either notice to take delivery or a notice of intention to sell and has been unable to do so because—

- (a) he has been unable to trace the depositor; or
- (b) the notice has been refused or returned undelivered,

he may give notice by publishing it, in such form as may be prescribed, once in the Gazette and once in a national daily newspaper.