

**THE REGISTERED LAND ORDINANCE, 1963**  
**No. 25 of 1963**

*Date of Assent: 22nd August, 1963.*

*Date of Commencement: ~~By notice~~*

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**An Ordinance to make further and better provision for the registration of title to land, and for the regulation of dealings in land so registered, and for purposes connected therewith**

ENACTED by the Central Legislature of Kenya, as follows:—

**PART I—PRELIMINARY**

Short title and commencement.

1. The Ordinance may be cited as the Registered Land Ordinance, 1963, and shall come into operation on such day as the Minister may, by notice in the Gazette, appoint.

Application.

2. This Ordinance shall apply to—

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(a) every area to which, immediately before the commencement of this Ordinance, the Land Registration (Special Areas) Ordinance applied;

(b) any area to which the Land Adjudication Ordinance is, on or after the commencement of this Ordinance, applied;

(c) any area to which the Minister may, by order, apply this Ordinance; and

(d) all land which from time to time is set apart under section 198 or section 199 of the Constitution.

Interpretation.

3. In this Ordinance, except where the context otherwise requires—

“adjudication officer” and “adjudication register” have the meanings assigned to “Adjudication Officer” and “Adjudication Register” in the Land Adjudication Ordinance;

65 of 1951.

“the African court” means the African court established under the African Courts Ordinance, 1951, and having jurisdiction in the area in question;

“certificate of lease” means a certificate of lease issued under section 32 of this Ordinance;

“charge” means an interest in land securing the payment of money or money’s worth or the fulfilment of any condition, and includes a subcharge and the instrument creating a charge;

“chargee” means the proprietor of a charge;

“chargor” means the proprietor of charged land or of a charged lease or charge;

“county council” means—

(a) in relation to trust land, the local authority in which the trust land in question is vested; and

(b) in relation to other land, the country council in whose area of jurisdiction the land is situated;

“the court”, save as is otherwise expressly provided means the court having jurisdiction in the matter in question by virtue of section 159 of this <sup>Act</sup> Ordinance;

“dealing” includes disposition and transmission;

“disposition” means any act by a proprietor whereby his rights in or over his land, lease or charge are affected, but does not include an agreement to transfer, lease or charge;

“easement” means a right attached to a parcel of land which allows the proprietor of the parcel either to use the land of another in a particular manner or to restrict its use to a particular extent, but does not include a profit;

“file” means place in the relative parcel file;

“guardian” means any person responsible (whether under African customary law or otherwise) for protecting the interests of any person who is under a disability, whether by reason of age, unsoundness of mind or any other cause;

“instrument” includes any deed, judgment, decree, order or other document requiring or capable of registration under this <sup>Act</sup> Ordinance;

“interest” in land includes absolute ownership of land;

“land” includes land covered with water, all things growing on land and buildings and other things permanently affixed to land;

“the Land Adjudication <sup>Act</sup> Ordinance” means the Land Registration (Special Areas) <sup>Act</sup> Ordinance as amended by section 165 of this <sup>Act</sup> Ordinance;

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“land certificate” means a land certificate issued under section 32 of this <sup>Act</sup> Ordinance;

“land register” means the land register compiled under Division 2 of Part II of this <sup>Act</sup> Ordinance;

“lease” means the grant, with or without consideration, by the proprietor of land of the right to the exclusive possession of his land, and includes the right so granted and the instrument granting it, and also includes a sublease, but does not include an agreement for lease;

“lessee” means the holder of a lease;

“lessor” means the person who has granted a lease or his successor in title;

“licence” means a permission given by the proprietor of land or a lease which allows the licensee to do some act in relation to the land or the land comprised in the lease which would otherwise be a trespass, but does not include an easement or a profit;

“parcel” means an area of land separately delineated on the registry map;

“periodic tenancy” means a tenancy from year to year, half year to half year, quarter to quarter, month to month, week to week or the like;

“personal representative” means executor of the will or administrator of the estate;

“presentation book” means the presentation book kept under section 6 (1) (d) of this <sup>Act</sup> Ordinance;

“profit” means the right to go on the land of another and take a particular substance from that land, whether the soil or products of the soil;

“proprietor” means—

(a) in relation to land or a lease, the person named in the register as the proprietor thereof; and

(b) in relation to a charge of land or a lease, the person named in the register of the land or lease as the person in whose favour the charge is made;

“Regional Assembly” means the Regional Assembly for the Region in which the land in question is situated;

“the register” means the leaf of the land register kept in respect of a parcel of land or a registered lease;

“to register” means to make an entry, note or record in the register under this <sup>Act</sup> Ordinance, and “registered”, “unregistered” and “registration” bear a corresponding meaning;

“the Registrar” means—

(a) the Chief Land Registrar or the Deputy Chief Land Registrar, appointed under section 7 of this Ordinance; or

(b) where a Land Registrar or an Assistant Land Registrar has been authorized under section 7 (4) of this Ordinance to exercise or perform any particular

power or duty, that Land Registrar or Assistant Land Registrar so far as concerns that power or duty;

“registration district” means a land registration district constituted under section 5 of this <sup>Act</sup> Ordinance;

“registration section” means a division of a registration district established under section 18 (3) of this <sup>Act</sup> Ordinance;

“registry” means a land registry established under section 6 (1) of this <sup>Act</sup> Ordinance;

“registry map” means the map or series of maps referred to in section 18 of this <sup>Act</sup> Ordinance;

“transfer” means the passing of land, a lease or a charge by act of the parties and not by operation of law, and also the instrument by which such passing is effected;

“transmission” means the passing of land, a lease or a charge from one person to another by operation of law on death or insolvency or otherwise howsoever, and includes the compulsory acquisition of land under any written law;

“trustee” includes personal representative;

“valuable consideration” includes marriage, but does not include a nominal consideration.

**4.** Except as otherwise provided in this <sup>Act</sup> Ordinance, no other written law and no practice or procedure relating to land shall apply to land registered under this <sup>Act</sup> Ordinance so far as it is inconsistent with this <sup>Act</sup> Ordinance.

Conflict with other laws.

Provided that, except where a contrary intention appears, nothing contained in this <sup>Act</sup> Ordinance shall be construed as permitting any dealing which is forbidden by the express provisions of any other written law or as overriding any provision of any other written law requiring the consent or approval of any authority to any dealing.

## PART II—ORGANIZATION AND ADMINISTRATION

### *Division 1—Land Registries and Officers*

**5.** For the purposes of this <sup>Act</sup> Ordinance, the Minister may, by order, constitute an area or areas of land a land registration district or land registration districts and may at any time vary the limits of any such district.

Registration districts.

Land registries.

6. (1) There shall be maintained in each registration district a land registry, in which there shall be kept—

- (a) a register, to be known as the land register, in accordance with Division 2 of this Part;
- (b) the registry map;
- (c) parcel files containing the instruments which support subsisting entries in the land register and any filed plans and documents;
- (d) a book, to be known as the presentation book, in which shall be kept a record of all applications numbered consecutively in the order in which they are presented to the registry;
- (e) at the discretion of the Chief Land Registrar an index, in alphabetical order, of the names of the proprietors (other than public bodies, banks, building societies and other corporations which lend money on the security of land) of land, leases and charges, showing the numbers of the parcels in which they are interested; and
- (f) a register and a file of powers of attorney.

(2) The registers of powers of attorney for the time being maintained for the purposes of the ~~Crown Lands Ordinance~~, the ~~Land Titles Ordinance~~ and the ~~Registration of Titles Ordinance~~ shall be deemed to be registers of powers of attorney under this section.

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Cap. 282.  
Cap. 281.

Appointment of officers.

7. (1) ~~The Governor shall appoint a Chief Land Registrar, who shall be responsible for administering the land registries in accordance with this Ordinance.~~

(2) ~~The Governor may appoint a Deputy Chief Land Registrar and so many Land Registrars and Assistant Land Registrars as may be necessary for carrying out the provisions of this Ordinance.~~

(3) The Deputy Chief Land Registrar shall have all the powers and may perform all or any of the duties conferred and imposed on the Chief Land Registrar by this Ordinance or by any rules made thereunder, except the power of authorization conferred by subsection (4) of this section.

(4) The Chief Land Registrar may in writing authorize any Land Registrar or Assistant Land Registrar to exercise or to perform all or any of the powers or duties conferred on the Chief Land Registrar by this Ordinance<sup>Act</sup> or by any rules made thereunder, and may at any time revoke or vary any such authorization:

Provided that no such authorization shall be deemed to divest the Chief Land Registrar of any of his powers or duties, and he may, if he thinks fit, exercise and perform all his powers or duties notwithstanding any such authorization.

8. The Registrar may exercise the following powers in addition to any other powers conferred on him by this Ordinance<sup>Act</sup>, that is to say—

General  
powers of  
Registrar

- (a) he may require any person to produce any instrument, certificate or other document or plan relating to the land, lease or charge in question, and that person shall produce the same;
- (b) he may summon any person to appear and give any information or explanation respecting land, a lease or a charge, or any instrument, certificate or other document or plan relating to the land, lease or charge in question, and such person shall appear and give such information or explanation;
- (c) he may refuse to proceed with any registration if any instrument, certificate or other document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Ordinance<sup>Act</sup> is not performed;
- (d) he may administer oaths or take a declaration in lieu thereof, and may require that any proceedings, information or explanation affecting registration shall be verified on oath or by statutory declaration;
- (e) he may order that the costs, charges and expenses incurred by him or by any person in connexion with any investigation or hearing held by him for the purposes of this Ordinance<sup>Act</sup> shall be borne and paid by such persons and in such proportions as he may think fit.

Seal of  
registry.

9. Each registry shall have a seal, and every instrument purporting to bear the imprint of such a seal shall be received in evidence and, unless the contrary is shown, shall be deemed without further proof to be issued by or under the direction of the Chief Land Registrar.

*Division 2—The Land Register*

The land  
register.

10. (1) The land register shall comprise a register in respect of each parcel in each registration section, and a register in respect of each lease required by this Ordinance<sup>Act</sup> to be registered.

(2) Each register shall be divided into three sections as follows—

A—the property section, containing a brief description of the land or lease, together with particulars of its appurtenances and a reference to the registry map and filed plan, if any; and

B—the proprietorship section, containing the name and, where possible, the address of the proprietor and a note of any inhibition, caution or restriction affecting his right of disposition;

C—the encumbrances section, containing a note of every encumbrance and every right adversely affecting the land or lease.

11. (1) The registers kept under section 33 of the Land Registration (Special Areas) Ordinance<sup>Act</sup> for the several registration districts established under that Ordinance<sup>Act</sup> shall, on the commencement of this Ordinance<sup>Act</sup>, be deemed to be the land registers for the corresponding registration districts established under this Ordinance<sup>Act</sup>.

(2) Whenever an adjudication register has become final under section 27 of the Land Adjudication Ordinance<sup>Act</sup>, the adjudication officer shall deliver the adjudication register to the Land Registrar or Assistant Land Registrar in charge of the registration district concerned, who shall prepare a register for each person shown in the adjudication register as a landowner and every other person shown in the adjudication register as being entitled to the benefit of any interest, lease,

Compilation of  
land register for  
special areas.  
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right of occupation, charge or other encumbrance affecting the land shall be registered as being so entitled, subject in every case to any restriction of the power of the proprietor or of any such person as aforesaid to deal with the land, and to any interest, lease, right of occupation, charge or encumbrance affecting the land.

(3) For the purposes of this <sup>Act</sup> Ordinance, a right of occupation under African customary law recorded in the adjudication register shall be deemed to be a tenancy from year to year.

12. (1) On the application of this <sup>Act</sup> Ordinance under section 2 of this <sup>Act</sup> Ordinance to any area, then, in relation to every parcel of land situated in that area the title to which is already registered under the Registration of Titles <sup>Act</sup> Ordinance, the <sup>Government</sup> Crown Lands <sup>Act</sup> Ordinance or the Land Titles <sup>Act</sup> Ordinance, the following provisions shall apply—

Compilation of land register where land registered under other Ordinances, and of Crown land and Trust land.  
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Cap. 280.  
Cap. 282.

(a) if the title to the parcel is comprised in a grant or certificate of title registered under the Registration of Titles <sup>Act</sup> Ordinance—

(i) the grant or certificate of title shall be deemed to be a land certificate or certificate of lease, as the case may be, issued under this <sup>Act</sup> Ordinance, and the folio of the register of titles kept under section 25 of the Registration of Titles <sup>Act</sup> Ordinance shall be deemed to be the register under this <sup>Act</sup> Ordinance:

Provided that the Registrar may at any time prepare a register in the prescribed form showing all subsisting particulars contained in or endorsed on the folio of the register of titles kept as aforesaid and substitute such register for such folio and issue to the proprietor a land certificate or certificate of lease, as the case may be, in the prescribed form; and

(ii) that <sup>Act</sup> Ordinance shall cease to apply to the parcel and this <sup>Act</sup> Ordinance shall apply thereto;

(b) if the title to the parcel is comprised in a register kept under the <sup>Government</sup> Crown Lands <sup>Act</sup> Ordinance or the Land Titles <sup>Act</sup> Ordinance, the Registrar shall—

(i) as soon as conveniently possible, cause the title to be examined;

- (ii) prepare a register in the prescribed form showing all subsisting particulars affecting the parcel which are capable of registration under this Ordinance;
- (iii) serve on the proprietor and on the proprietor of any lease or charge a notice of intention to register; and
- (iv) issue to the proprietor if he so requires a land certificate or certificate of lease in the prescribed form;

and, on the expiration of the period limited by the notice or as soon as the Registrar has determined any objection made in pursuance thereof, Part X of the Crown Lands Ordinance or Part III of the Land Titles Ordinance, as the case may be, shall cease to apply to the parcel and this Ordinance shall apply thereto.

(2) On the application of this Ordinance to any area, the Registrar shall register—

- (a) the <sup>Minister</sup> ~~Government~~ on behalf of Her Majesty in right of the Government of Kenya as the proprietor of all <sup>Government</sup> ~~Crown~~ land in the area;
- (b) a Region as the proprietor of all land which is vested by or under the Constitution in that Region; and
- (c) the relative county council as the proprietor of all trust land in the area;

subject, in each case, to any grant or lease affecting the land, and on such application the Registration of Titles Ordinance shall cease to apply to the land.

(3) Upon the registration of the county council as proprietor of any land under subsection (2) of this section, there shall also vest in the county council all rights, powers and liabilities of the <sup>Minister</sup> ~~Government~~ under any grant or lease then subsisting in respect of the land.

**13.** (1) A parcel, the title to which, on the application of this Ordinance to the area in which it is situated, is registered under the Crown Lands Ordinance or the Land Titles Ordinance shall continue to be dealt with in accordance with the Crown Lands Ordinance or the Land Titles Ordinance, as the case may be, until this Ordinance applies to that parcel under section 12 (1) (b) of this Ordinance.

(2) Nothing in this <sup>Act</sup> Ordinance shall affect the rights, liabilities and remedies of the parties under any mortgage, charge, memorandum of equitable mortgage, memorandum of charge by deposit of title or lease which, immediately before the registration under this <sup>Act</sup> Ordinance of the land affected thereby, was registered under the <sup>Government</sup> Crown Lands <sup>Act</sup> Ordinance, the Land Titles <sup>Act</sup> Ordinance, the Registration of Titles <sup>Act</sup> Ordinance or the Land Registration (Special Areas) <sup>Act</sup> Ordinance, and—

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(a) such rights, liabilities and remedies shall be exercisable and enforceable in accordance with the law which was applicable thereto immediately before the registration of the land under this <sup>Act</sup> Ordinance; and

(b) any such memorandum of equitable mortgage or memorandum of charge by deposit of title may be discharged by the execution of a discharge in the form prescribed under the <sup>Act</sup> Ordinance under which such memorandum was first registered.

**14.** The date of first registration under this <sup>Act</sup> Ordinance of any land shall—

First  
registration.

(a) in the case of land the subject of a grant or lease under the Registration of Titles <sup>Act</sup> Ordinance, be deemed to be the date on which this <sup>Act</sup> Ordinance applied to the land concerned;

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(b) in the case of land registered under the Land Registration (Special Areas) <sup>Act</sup> Ordinance, be deemed to be the date on which it was first registered under that <sup>Act</sup> Ordinance;

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(c) in the case of land the subject of a grant, lease or certificate of ownership registered under the <sup>Government</sup> Crown Lands <sup>Act</sup> Ordinance or the Land Titles <sup>Act</sup> Ordinance, be the date on which this <sup>Act</sup> Ordinance applies thereto by virtue of section 12 (1) (b) of this <sup>Act</sup> Ordinance;

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(d) in any other case be the date on which the land first came on to the land register.

**15.** Registration shall be effected by an entry in the land register in such form as the Chief Land Registrar may from time to time direct, and by the cancellation of the entry, if any, which it replaces.

Manner of  
registration.

New editions  
of register.

**16.** The Registrar at any time may open a new edition of a register showing only subsisting entries and omitting therefrom all entries that have ceased to have any effect.

Cancellation  
of obsolete  
entries.

**17.** The Registrar may cancel any entry in the register which he is satisfied has ceased to have any effect.

*Division 3—Maps, Parcels and Boundaries*

Registry map.

**18.** (1) The Director of Surveys shall prepare and thereafter maintain a map or series of maps, to be called the registry map, for every registration district.

(2) Where for any registration district, or for a part thereof, no map has been so prepared, the Registrar may himself cause a map or series of maps to be prepared for that registration district, or for that part, and thereafter maintained, and such map or series of maps shall be deemed to be the registry map until the Director of Surveys prepares a map or maps under subsection (1) of this section and delivers it to the Registrar.

(3) On the registry map, every registration district shall be divided into registration sections, which shall be identified by distinctive names, and the registration sections may be further divided into blocks, which shall be given distinctive numbers or letters or combinations of numbers and letters.

(4) The parcels in each registration section or block shall be numbered consecutively, and the name of the registration section and the number and letter of the block, if any, and the number of the parcel shall together be a sufficient reference to any parcel.

(5) The Registrar may, at any time, cause registration sections or blocks to be combined or divided, or cause their boundaries to be varied.

(6) A plan may be filed in respect of a particular parcel to augment the information available from the registry map, and the filing of the plan shall be noted in the register.

Power to alter  
registry map  
and to prepare  
new editions.

**19.** (1) Where the Registrar is maintaining the registry map he may, or in any case he may require the Director of Surveys to, correct the line or position of any boundary shown on the registry map with the agreement of every person

shown by the register to be affected by the correction, but no such correction shall be effected except on the instructions of the Registrar in writing in the prescribed form, to be known as a mutation form, and the mutation form shall be filed.

(2) Whenever the boundary of a parcel is altered on the registry map, the parcel number shall be cancelled and the parcel shall be given a new number.

(3) Where the Registrar is maintaining the registry map he may, or in any case he may require the Director of Surveys to, prepare a new edition of the registry map or any part thereof, and there may be omitted from the new map any matter which the Registrar considers obsolete.

**20.** The Registrar may cause a survey to be made for any purpose connected with this <sup>Act</sup> Ordinance, but, where the registry map is maintained by the Director of Surveys such survey shall be used to amend the registry map only if it is approved by the Director of Surveys.

Further surveys.

**21.** (1) Except where, under section 22 of this <sup>Act</sup> Ordinance, it is noted in the register that the boundaries of a parcel have been fixed, the registry map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.

Boundaries.

(2) Where any uncertainty or dispute arises as to the position of any boundary, the Registrar, on the application of any interested party, shall, on such evidence as the Registrar considers relevant, determine and indicate the position of the uncertain or disputed boundary.

(3) Where the Registrar exercises the power conferred by subsection (2) of this section, he shall make a note to that effect on the registry map and in the register and shall file such plan or description as may be necessary to record his decision.

(4) No court shall entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this section.

(5) Except where, as aforesaid, it is noted in the register that the boundaries of a parcel have been fixed, the court or the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as it or he thinks fit.

Fixed  
boundaries.

**22.** (1) If the Registrar in his discretion considers it desirable to indicate on a filed plan, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if any interested person makes application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.

(2) The Registrar shall, after giving all persons appearing by the register to be affected an opportunity of being heard, cause to be defined by survey the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and thereupon the plan shall be deemed to define accurately the boundaries of the parcel.

(3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the Director of Surveys, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this section.

Maintenance  
of boundary  
features.

**23.** (1) Every proprietor of land shall maintain in good order the fences, hedges, stones, pillars, walls and other features which demarcate his boundaries, whether established pursuant to the requirements of any other written law or pursuant to an order of the Registrar or of the proprietor's own accord.

(2) The Registrar may in writing order the demarcation within a specified time of any boundary in such permanent manner as he may direct, and any person who fails to comply with such an order shall be guilty of an offence and liable to a fine not exceeding two hundred shillings.

(3) The Registrar may in writing order which of adjoining proprietors shall be responsible for the care and maintenance of any feature demarcating a common boundary, and any proprietor so ordered to be responsible who allows the

boundary feature or any part of it to fall into disrepair or to be destroyed or removed shall be guilty of an offence and liable to a fine not exceeding two hundred shillings.

24. (1) Any person who defaces, removes, injures or otherwise impairs any boundary feature or any part of it unless authorized to do so by the Registrar shall be guilty of an offence and liable to imprisonment for a term not exceeding two months or to a fine not exceeding two thousand shillings, or to both such imprisonment and such fine.

Interference with boundary features.

(2) Any person convicted of such an offence, whether or not any penalty therefor is imposed upon him, shall be liable to pay the cost of restoring the boundary feature, and such cost shall be recoverable as a civil debt by any person responsible under this section for the maintenance of the feature.

25. (1) Where contiguous parcels are owned by the same proprietor and are subject in all respects to the same rights and obligations, the Registrar, on application by the proprietor, may combine these parcels by closing the registers relating to them and opening a new register or registers in respect of the parcel or parcels resulting from the combination.

Combinations and subdivisions.

(2) Upon the application of the proprietor of a parcel for the division of his parcel into two or more parcels, the Registrar shall effect the division by closing the register relating to the parcel and opening new registers in respect of the new parcels resulting from the division, and recording in the new registers all subsisting entries appearing in the closed register:

Provided that—

- (i) nothing shall be done under this section which would be inconsistent with this ~~Ordinance~~<sup>Act</sup> or any other written law; and
- (ii) no parcel which is subject to a lease shall be subdivided.

26. (1) The Registrar may, on the application of the proprietors of contiguous parcels who are desirous of changing the layout of their parcels, and with the consent in writing of all other persons in whose names any right or interest in such

Reparcellation.

parcels is registered and of any cautioner, cancel the registers relating to such parcels and prepare new registers in accordance with the revised layout:

Provided that, where in the opinion of the Registrar a proposed reparation involves substantial changes of ownership which should be effected by transfers without invoking this section, he may in his discretion refuse to effect such reparation.

(2) Upon any such reparation, the new parcels shall, notwithstanding section 38 of this Ordinance<sup>Act</sup>, vest in the persons in whose names they are registered.

### PART III—EFFECT OF REGISTRATION

**27.** Subject to the provisions of this Ordinance<sup>Act</sup>—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;
- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease.

**28.** The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall be rights not liable to be defeated except as provided in this Ordinance<sup>Act</sup>, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

- (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- (b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 30 of this Ordinance<sup>Act</sup> not to require noting on the register:

Interest  
conferred by  
registration.

Rights of  
proprietor.

Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee.

**29.** Every proprietor who has acquired land, a lease or a charge by transfer without valuable consideration shall hold it subject to any unregistered rights or interests subject to which the transferor held it, and subject also to the provisions of the Bankruptcy Ordinance<sup>Act</sup> and to the winding-up provisions of the Companies Ordinance<sup>Act</sup>, but save as aforesaid such transfer when registered shall in all respects have the same effect as a transfer for valuable consideration.

Voluntary transfer.

Cap. 53.

Cap. 486.

**30.** Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register—

Overriding interests.

- (a) rights of way, rights of water and profits subsisting at the time of first registration under this Ordinance<sup>Act</sup>;
- (b) natural rights of light, air, water and support;
- (c) rights of compulsory acquisition, resumption, entry, search and user conferred by any other written law;
- (d) leases or agreements for leases for a term not exceeding two years, periodic tenancies and indeterminate tenancies<sup>Act</sup> within the meaning of section 46 of this Ordinance<sup>Act</sup>;
- (e) charges for unpaid rates and other moneys which, without reference to registration under this Ordinance<sup>Act</sup>, are expressly declared by any written law to be a charge upon land;
- (f) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;
- (g) the rights of a person in possession or actual occupation of land to which he is entitled in right only of such possession or occupation, save where inquiry is made of such person and the rights are not disclosed;

(h) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law;

Provided that the Registrar may direct registration of any of the liabilities, rights and interest hereinbefore defined in such manner as he thinks fit.

Entries to constitute actual notice.

**31.** Every proprietor acquiring any land, lease or charge shall be deemed to have had notice of every entry in the register relating to the land, lease or charge and subsisting at the time of acquisition.

#### PART IV—CERTIFICATES AND SEARCHES

Land certificates and certificates of lease.

**32.** (1) The Registrar shall, if requested by any proprietor of land or a lease where no land certificate or certificate of lease has been issued, issue to him a land certificate or a certificate of lease, as the case may be, in the prescribed form showing, if so required by the proprietor, all subsisting entries in the register affecting that land or lease:

Provided that—

- (i) only one such certificate shall be issued in respect of each parcel of land or lease;
- (ii) no certificate of lease shall be issued unless the lease is for a certain period exceeding twenty-five years.

(2) A land certificate or certificate of lease shall be only prima facie evidence of the matters shown therein, and the land or lease shall be subject to all entries in the register whether they are shown on the certificate or not.

(3) When there is more than one proprietor, the proprietors shall agree among themselves as to who shall receive the certificate, and failing agreement the certificate shall be filed in the registry.

(4) The date of issue of a land certificate or certificate of lease shall be noted in the register.

Production of certificate.

**33.** (1) If a land certificate or a certificate of lease has been issued, then, unless it is filed in the registry or the Registrar dispenses with its production, it shall be produced

on the registration of any dealing with the land or lease to which it relates, and, if the certificate shows all subsisting entries in the register, a note of such registration shall be made on the certificate.

(2) If the disposition is a transfer, the certificate if produced shall be destroyed, and in such case a new certificate may be issued to the new proprietor.

(3) If the disposition is a charge, the certificate shall be delivered to the chargor.

34. On the registration of any disposition of a lease or charge the duplicate and the triplicate of the lease or charge shall be produced to the Registrar, who shall note particulars of the disposition on the filed lease or charge and on the duplicate and triplicate thereof unless the Registrar is satisfied that they cannot be produced.

Dispositions of leases and charges

35. (1) If a land certificate or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issue of a new certificate, and shall produce evidence to satisfy the Registrar of the loss or destruction of the previous certificate.

Lost or destroyed certificates.

(2) The Registrar may require a statutory declaration that the certificate has been lost or destroyed.

(3) The Registrar, if satisfied with the evidence as to the destruction or loss of the certificate, and after the publication of such notice as he may think fit, may issue a new certificate.

(4) When a lost certificate is found, it shall be delivered to the Registrar for cancellation.

36. (1) Any person, on application in the prescribed form, may inspect during official hours of business any register and any sheet of the registry map or any filed instrument or plan.

Searches and copies.

(2) Any person may require an official search in respect of any parcel, and shall be entitled to receive particulars of the subsisting entries in the register relating thereto, and certified copies of any document or of the registry map or of any plan filed in the registry.

37. (1) Every document purporting to be signed by a Registrar shall, in all proceedings, be presumed to have been so signed until the contrary is proved.

Evidence.

(2) Every copy of or extract from a document certified by the Registrar to be a true copy or extract shall, in all proceedings, be received as prima facie evidence of the contents of the document.

(3) Every entry or note in or on any register, registry map or filed plan shall, subject to sections 142 and 143 of this Ordinance, be received in all proceedings as conclusive evidence of the matter or transaction which it records.

(4) No process for compelling the production of the register, or of the registry map, or of any filed instrument or plan, shall issue from any court except with the leave of that court, which leave shall not be granted if a certified copy or extract will suffice, and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the court.

## PART V—DISPOSITIONS

### Division 1—General

**38.** (1) No land, lease or charge shall be capable of being disposed of except in accordance with this Ordinance, and every attempt to dispose of such land, lease or charge otherwise than in accordance with this Ordinance shall be ineffectual to create, extinguish, transfer, vary or effect any estate, right or interest in the land, lease or charge.

(2) Nothing in this section shall be construed as preventing any unregistered instrument from operating as a contract, but no action may be brought upon any contract for the disposition of any interest in land unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and is signed by the party to be charged or by some other person thereunto by him lawfully authorized:

Provided that such an action shall not be prevented by reason only of the absence of writing, where an intending purchaser or lessee who has performed or is willing to perform his part of a contract—

- (i) has in part performance of the contract taken possession of the property for any part thereof; or
- (ii) being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract.

(3) The Minister, after consultation with the Council of the Law Society of Kenya, may prescribe terms and conditions of sale which shall apply to contracts by correspondence, subject to any modification or any stipulation or any intention to the contrary which is expressed in the correspondence, and which may be made to apply to any other cases for which the terms and conditions are made available, where express reference is made to those terms and conditions.

(4) Where any trust land registered under this ~~Ordinance~~<sup>Act</sup> in the name of a county council, being land in the special areas, has been granted or leased by the ~~Governor~~<sup>Minister</sup> before the commencement of this ~~Ordinance~~<sup>Act</sup> under the powers vested in him by any written law, the proprietor of the land granted or the lease shall not dispose of the land granted or the lease without the consent in writing of the Trust Land Board, and any condition contained in the grant or lease requiring the consent of any other person to disposal shall be absolutely void.

**39.** (1) No person dealing or proposing to deal for valuable consideration with a proprietor shall be required or in any way concerned—

Protection of persons dealing in registered land.

(a) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered; or

(b) to see to the application of any consideration or any part thereof; or

(c) to search any register kept under the Land Registration (Special Areas) ~~Ordinance~~<sup>Act</sup>, the ~~Crown Lands Ordinance~~<sup>Act</sup>, the ~~Land Titles Ordinance~~<sup>Act</sup> or the Registration of Titles ~~Ordinance~~<sup>Act</sup>.

Cap. 283.  
Cap. 280.  
Cap. 282.  
Cap. 281.

(2) Where the proprietor of land, a lease or a charge is a trustee, he shall, in dealing therewith, be deemed to be absolute proprietor thereof, and no disposition by such trustee to a bona fide purchaser for valuable consideration shall be defeasible by reason of the fact that such disposition amounted to a breach of trust.

Additional fee  
for delayed  
registration.

40. Where an instrument is presented for registration later than three months from the date of the instrument, then, as well as the registration fee, an additional fee equal to the registration fee shall be payable for each three months which have elapsed since such date:

Provided that—

- (i) in no such case shall the sum of the additional fees exceed five times the original registration fee payable;
- (ii) the Chief Land Registrar may, in his sole discretion, remit any additional fee payable by virtue of this section, either in whole or in part.

Power to  
compel  
registration.

41. (1) If he is satisfied that any person, through his wilful default, has failed to register any instrument which is registrable under this Ordinance, the Registrar may by notice in writing order such person to present such instrument for registration, and thereupon the registration fee and any additional fee payable under section 40 of this Ordinance shall become due and shall be payable whether the instrument is presented for registration or not.

(2) Any person who fails to comply with an order of the Registrar under subsection (1) of this section within one month of the service of the notice shall be guilty of an offence and shall be liable to a fine not exceeding five hundred shillings.

Priority of  
registered  
interests.

42. (1) Interests appearing in the register shall have priority according to the order in which the instruments which led to their registration were presented to the registry, irrespective of the dates of the instruments and notwithstanding that the actual entry in the register may be delayed:

Provided that where an instrument is prepared in the registry it shall be deemed to have been presented on the date on which application for its preparation was made to the Registrar.

(2) Instruments sent by post or under cover and received during the hours of business shall be deemed to be presented simultaneously immediately before the closing of the office on that day, and instruments so sent but received between the time of closing and the next opening of the office for business shall be deemed to be presented simultaneously immediately after such opening.

(3) Where more than one instrument or application are presented on the same day, or on different days but at so short an interval from each other that in the opinion of the Registrar there is doubt as to their order of priority, the Registrar may refuse registration until he has heard and determined the rights of the parties interested thereunder.

43. (1) Where any person proposing to deal with registered land has, with the consent in writing of the proprietor, applied for an official search and has stated in his application the particulars of the proposed dealing, the registration of any instrument affecting the land to be comprised in or affected by the proposed dealing shall be stayed for a period (hereinafter referred to as the suspension period) of fourteen days from the time at which application for the search was made, and a note shall be made in the register accordingly.

Stay of registration.

(2) If within the suspension period a properly executed instrument effecting the proposed dealing is presented for registration, such instrument shall have priority over any other instrument which may be presented for registration during the suspension period, and shall be registered notwithstanding any caution or any other entry for which application for registration may have been made during the suspension period.

(3) Subject to subsection (2) of this section, any instrument or document for which application for registration is made during the suspension period other than that effecting the proposed dealing shall be dealt with in the same manner, shall have the same priority and shall be as effectual as if no stay of registration had been obtained.

44. Where, upon the registration of a dealing, the interests of—

Merges of registered interests.

(a) lessor and lessee; or

(b) chargor and chargee; or

(c) the proprietor of a parcel which is burdened with an easement, profit or restrictive agreement and the proprietor of a parcel which benefits therefrom,

vest in the same proprietor, such interests shall not merge unless a surrender or discharge is registered or the parcels are combined or there is a declaration of merger, which may be contained in the instrument evidencing the dealing.

*Division 2—Leases*

Leases.

**45.** Subject to the provisions of this Ordinance and of any other written law, the proprietor of land may lease the land or part of it to any person for a definite term or for the life of the lessor or of the lessee or for a period which though indefinite may be determined by the lessor or the lessee, and subject to such conditions as he may think fit:

Provided that, if only part is leased, the lease shall be accompanied by a plan or other description which the Registrar, in his absolute discretion, deems adequate to identify the part leased.

Periodic tenancies.

**46.** (1) Subject to any written law governing agricultural tenancies—

(a) where in any lease the term is not specified and no provision is made for the giving of notice to determine the tenancy, the lease shall be deemed to have created a periodic tenancy;

(b) where the proprietor of land permits the exclusive occupation of the land or any part thereof by any other person at a rent but without any agreement in writing, that occupation shall be deemed to constitute a periodic tenancy;

(c) the period of a periodic tenancy created by this subsection shall be the period by reference to which the rent is payable, and the tenancy may be determined by either party giving to the other notice, the length of which shall, subject to any other written law, be not less than the period of the tenancy and shall expire on one of the days on which rent is payable.

(2) No periodic tenancy of any kind shall be capable of registration, but it shall be deemed to be a right to obtain an interest for the purposes of section 131 of this Ordinance.

Registration of leases.

**47.** A lease for a specified period exceeding two years, or for the life of the lessor or of the lessee, or a lease which contains an option whereby the lessee may require the lessor to grant him a further term or terms which, together with the original term, exceed two years, shall be in the prescribed form, and shall be completed by—

(a) opening a register in respect of the lease in the name of the lessee; and

(b) filing the lease; and

(c) noting the lease in the encumbrances section of the register of the lessor's land or lease.

**48.** Upon the registration of a lease containing an agreement, express or implied, by the lessee that he will not transfer, sub-let, charge or part with possession of the land leased or any part thereof without the written consent of the lessor, the agreement shall be noted in the register of the lease, and no dealing with the lease shall be registered until the consent of the lessor, verified in accordance with section 110 of this Ordinance, has been produced to the Registrar.

Lessor's consent to dealing with lease.

**49.** Where any land is subject to a charge, no lease of such land shall be registered without the previous consent in writing of the proprietor of the charge, verified in accordance with section 110 of this Ordinance, unless the charge expressly dispenses with the necessity for such consent.

Lease of charged land.

**50.** (1) Where the period of a lease is expressed as commencing on a particular day, that day is excluded in computing that period.

Duration of leases.

(2) Where no day of commencement is named, the period commences on the date of first execution of the lease, and that day is excluded in computing that period.

(3) Where the period is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day on which such period commences.

**51.** (1) A lease may be made for a period to commence on a future date, not being later than twenty-one years from the date on which the lease is executed, but shall be of no effect unless it is registered.

Future leases.

(2) Any instrument purporting to create a lease to commence on a date more than twenty-one years after the date of the instrument, or to take effect on the fulfilment of any condition, is void.

**52.** (1) Where a person, having lawfully entered into occupation of any land as lessee, continues to occupy that land with the consent of the lessor after the determination of

Holding over.

the lease, he shall, subject to any written law governing agricultural tenancies and in the absence of any evidence to the contrary, be deemed to be a tenant holding the land on a periodic tenancy on the same conditions as those of the lease, so far as those conditions are appropriate to a periodic tenancy.

(2) For the purposes of this section, the acceptance of rent in respect of any period after the determination of the lease shall, if the former tenant is still in occupation and subject to any agreement to the contrary, be taken as evidence of consent to the continued occupation of the land.

**53.** Save as otherwise expressly provided in the lease and subject to any written law governing agricultural tenancies, there shall be implied in every lease agreements by the lessor with the lessee binding the lessor—

- (a) that, so long as the lessee pays the rent and observes and performs the agreements and conditions contained or implied in the lease and on his part to be observed and performed, the lessee shall and may peaceably and quietly possess and enjoy the leased premises during the period of the lease without any lawful interruption from or by the lessor or any person rightfully claiming through him;
- (b) not to use or permit to be used any adjoining or neighbouring land of which he is the proprietor or lessee in any way which would render the leased premises unfit or materially less fit for the purpose for which they were leased;
- (c) where part only of a building is leased, to keep the roof, main walls and main drains, and the common passages and common installations, in repair;
- (d) where any dwelling-house, flat or room is leased furnished, that such house, flat or room is fit for habitation at the commencement of the tenancy; and
- (e) that if at any time the leased premises or any part thereof are destroyed or damaged by fire, civil commotion or accident not attributable to the negligence of the lessee, his servants or his licensees, so as to render the leased premises or any part thereof wholly or partially unfit for occupation or use, the rent or a

just proportion thereof according to the nature and extent of the damage sustained shall be suspended and cease to be payable until the leased premises have again been rendered fit for occupation and use; but that if the leased premises have not been so rendered fit for occupation and use within six months of their destruction or damage as aforesaid, the lessee may at his option, and on giving one month's written notice of his intention so to do, determine the lease.

54. Save as otherwise expressly provided in the lease and subject to any written law governing agricultural tenancies, there shall be implied in every lease agreements by the lessee with the lessor binding the lessee—

Agreements implied in leases on part of lessee.

- (a) to pay the rent reserved by the lease at the times and in the manner therein specified;
- (b) to pay all rates, taxes and other outgoings which are at any time payable in respect of the leased premises during the continuance of the lease unless the same are payable exclusively by the lessor by virtue of any written law;
- (c) except where part only of a building is leased, or where a dwelling-house is leased furnished, to keep all buildings comprised in the lease and all boundary marks in repair;
- (d) where part only of a building is leased, or where a dwelling-house is leased furnished, to keep the leased premises, except the roof, main walls and main drains, and the common passages and common installations in repair;
- (e) where the lease is of furnished premises, to keep the furniture in as good condition as it was at the commencement of the period, fair wear and tear only excepted, and to replace such articles as are lost, destroyed or so damaged as to be beyond repair with articles of equal value to those so lost, destroyed or damaged;
- (f) to permit the lessor or his agent with or without workmen or others at all convenient times and after reasonable notice to enter on the leased premises and examine their condition;

- (g) to repair or otherwise make good any defect or breach of agreement for which the lessee is responsible and of which notice has been given by the lessor to the lessee, within such reasonable period as may be specified in the notice; and
- (h) not to transfer, charge, sublease or otherwise part with the possession of the leased premises or any part thereof without the previous written consent of the lessor, but such consent shall not be unreasonably withheld.

**55.** Where an agreement is contained or implied in any lease to keep a building or a particular part of a building "in repair", it shall, in the absence of an express provision to the contrary, mean in such state of repair as that in which a prudent owner might reasonably be expected to keep his property, due allowance being made for the age, character and locality of the building at the commencement of the lease:

Provided that there shall not be read into such an agreement an undertaking to put any building into a better state of repair than that in which it was at the commencement of the lease.

**56.** (1) Subject to the provisions of section 59 of this Ordinance and to any provision to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee—

- (a) commits any breach of, or omits to perform, any agreement or condition on his part expressed or implied in the lease; or
- (b) is adjudicated bankrupt; or
- (c) being a company, goes into liquidation.

(2) The right of forfeiture may be—

- (a) exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land, by entering upon and remaining in possession of the land; or
- (b) enforced by action in the court.

Meaning of  
"in repair".

Lessor's  
right of  
forfeiture.

(3) The right of forfeiture shall be taken to have been waived if—

- (a) the lessor accepts rent which has become due since the breach of agreement or condition which entitled the lessor to forfeit the lease or has by any other positive act shown an intention to treat the lease as subsisting; and
- (b) the lessor is, or should by reasonable diligence have become, aware of the commission of the breach:

Provided that the acceptance of rent after the lessor has commenced an action in the court under subsection (2) of this section shall not operate as a waiver.

**57.** The forfeiture of a lease determines every sublease and every other interest appearing in the register relating to that lease, but—

Effect of forfeiture on subleases.

- (a) where the forfeiture is set aside by the court on the grounds that it was procured by the lessor in fraud of the sublessee; or
- (b) where the court grants relief against the forfeiture under section 59 of this ~~Ordinance~~<sup>Act</sup>,

every such sublease and other interest shall be deemed not to have determined.

**58.** Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease, whether expressed or implied, until the lessor has served on the lessee a notice—

Notice before forfeiture.

- (a) specifying the particular breach complained of; and
- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and
- (c) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach,

and the lessee has failed to remedy the breach within a reasonable time thereafter, if it is capable of remedy, and to make reasonable compensation in money.

Relief against  
forfeiture.

**59.** (1) A lessee upon whom a notice has been served under section 58 of this Ordinance, or against whom the lessor is proceeding, by action or re-entry, to enforce his right of forfeiture, may apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if it grants relief, may grant it on such terms as it thinks fit.

(2) The court, on application by any person claiming as sublessee or chargee any interest in the property or part of the property comprised in the lease forfeited or sought to be forfeited, may make an order vesting the property or such part in such sublessee or chargee for the whole period of the lease or any less period, upon such conditions as the court in the circumstances of the case thinks fit:

Provided that nothing in this subsection shall apply in the case of a forfeiture arising from a breach to which the sublessee is a party, or from the breach of an express agreement or condition against subleasing, parting with the possession of or disposing of the property leased.

(3) This section shall have effect notwithstanding any stipulation or agreement to the contrary and whether the lease is registered or not.

Variation and  
extension  
of leases.

**60.** Subject to the provisions of section 58 of this Ordinance, the agreements and conditions contained or implied in any registered lease may be varied, negatived or added to, and the period of any registered lease may from time to time be extended, by an instrument executed by the lessor and the lessee for the time being and registered before the expiration of the then current term of the lease.

Substitution  
of leases.

**61.** Where upon the presentation of a lease for registration the Registrar is satisfied that the lessee is the person registered as the proprietor of a prior lease in respect of the same land, he shall cancel the registration of the prior lease and register the new lease subject to the encumbrances registered against the prior lease.

Subleases.

**62.** (1) Subject to any provision in his lease affecting his right to do so, the proprietor of a registered lease may sublease for any period which is less than the remainder of the period of his lease by an instrument in the prescribed form.

(2) Save as otherwise expressly provided in this Ordinance, the provisions of this Ordinance affecting leases, lessors and lessees shall apply to subleases, sublessors and sublessees, with such adaptations as are necessary.

(3) If a lease is determined by operation of law or by surrender under any law relating to bankruptcy or winding up, such determination shall determine the sub-lease.

(4) In addition to the agreements specified by this Ordinance to be implied in leases, there shall be implied in every sublease under this Ordinance an agreement by the sublessor that he will, during the continuance of the sublease, pay the rent reserved by the lease under which the sublessor holds, and observe and perform the agreements and conditions thereof.

(5) Where a sublessee has paid to the sublessor's lessor the rent or any part of the rent payable by the sublessor under the lease under which the sublessor holds, the sublessee shall be entitled to set off any sum so paid against the rent payable by him to the sublessor in respect of the sublease.

**63.** (1) Where the lessor and the lessee agree that the lease shall be surrendered, it shall be surrendered in the following manner, that is to say—

Surrender  
of leases.

(a) an instrument shall be prepared in the prescribed form, or else the word "surrendered" shall be endorsed on the lease or on the duplicate or triplicate thereof;

(b) the instrument or endorsement shall then be executed by the lessee;

(c) the Registrar shall then cancel the registration of the lease; and

(d) the instrument or endorsed lease shall then be filed,

and thereupon, or upon such earlier date as is expressed in the instrument or endorsement, the interest of the lessee shall cease.

(2) No lease which is subject to a charge or a sublease shall be surrendered without the consent in writing of the proprietor of the charge or sublease.

Determination  
of leases.

**64.** (1) Where—

- (a) the period of a lease has expired; or
- (b) an event upon which a lease is expressed to determine has happened; or
- (c) a lessor has lawfully re-entered and recovered possession of the land leased; or
- (d) a notice duly given to determine the lease has expired,

the lease and every other interest appearing on the register relating to the lease shall thereupon determine, and if the lease is registered the lessor may apply in writing to the Registrar to cancel its registration.

(2) An application under this section shall be supported by such evidence of the matters giving rise to the determination and the recovery of possession by the lessor as the Registrar may require, and the Registrar on being satisfied of the matters set forth in the application shall cancel the registration of the lease.

*Division 3—Charges*

Form and  
effect of  
charges.

**65.** (1) A proprietor may, by an instrument in the prescribed form, charge his land, lease or charge to secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfilment of a condition, and the instrument shall, except where section 74 of this ~~Ordinance~~<sup>Act</sup> has by the instrument been expressly excluded, contain a special acknowledgement that the chargor understands the effect of that section, and the acknowledgement shall be signed by the chargor or, where the chargor is a corporation, by one of the persons attesting the affixation of the common seal.

(2) A date for the repayment of the money secured by a charge may be specified in the charge instrument, and where no such date is specified or repayment is not demanded by the chargee on the date specified the money shall be deemed to be repayable three months after the service of a demand in writing by the chargee.

(3) The charge shall be completed by its registration as an encumbrance and the registration of the person in whose favour it is created as its proprietor and by filing the instrument.

(4) A charge shall not operate as a transfer but shall have effect as a security only.

(5) There shall be included, in an instrument of charge securing the fulfilment of a condition or the payment of an annuity or other periodical payment not of the nature of interest on a capital sum, such provisions as the parties think fit for disposing, subject to the provisions of section 78 of this Ordinance, of the money which may arise on the exercise by the chargee of his power of sale, either by setting aside the proceeds of sale or part thereof and investing it to make the future periodical payments, or by payment to the chargee of such proceeds or part thereof to the extent of the estimated capital value of the chargee's interest, or otherwise.

66. A proprietor whose land, lease or charge is subject to a charge may create a second or subsequent charge in the same manner as the first charge and the same provisions shall apply thereto, but any sale under the power expressed or implied in any such charge shall be expressed to be subject to all prior charges unless all those charges have been discharged.

Second or subsequent charges.

67. Nothing in this Part affects the provisions of any Ordinance which provides for the registration of a notification or note in respect of any sum of money owing to a public body.

Statutory charges.

68. If any question arises whether any payment made by the chargor is in respect of principal or interest, such payment shall be presumed to be in respect of interest to the extent of all interest which is due and payable at the date of payment.

Presumption that money paid is interest.

69. There shall be implied in every charge, unless the contrary is expressed therein, agreements by the chargor with the chargee binding the chargor—

Agreements implied in charges.

(a) to pay the principal money on the day therein appointed and, so long as the principal money or any part thereof remains unpaid, to pay interest thereon, or on so much thereof as for the time being remains unpaid, at the rate, at the times and in manner therein specified;

- (b) to pay all rates, taxes and other outgoings which are at any time payable in respect of the charged property;
- (c) to repair and keep in repair all buildings and other improvements upon the charged land or comprised in the charged lease and to permit the chargee or his agent, at all reasonable times until the charge is discharged and after reasonable notice to the chargor, to enter the land and examine the state and condition of such buildings and improvements;
- (d) to insure and keep insured all buildings upon the charged land or comprised in the charged lease against loss or damage by fire in the joint names of the chargor and chargee with insurers approved by the chargee to the full value thereof;
- (e) in the case of a charge of agricultural land, to farm the land in accordance with the rules of good husbandry within the meaning of any law for the time being in force governing agricultural tenancies;
- (f) in the case of a charge of land or of a lease, not to lease the charged land or any part thereof, or sub-lease the whole or any part of the land comprised in the charged lease, for any period longer than one year without the previous consent in writing of the chargee, but such consent shall not be unreasonably withheld;
- (g) not to transfer the land, lease or charge charged or any part thereof without the previous written consent of the chargee but such consent shall not be unreasonably withheld;
- (h) in the case of a charge of a lease, during the continuance of the charge to pay the rent reserved by the lease and observe and perform the agreements and conditions thereof, and to keep the chargee indemnified against all proceedings, expenses and claims on account of the non-payment of the said rent or any part thereof, or the breach or non-observance of the said agreements and conditions or any of them, and, if the lessee has an enforceable right to renew the lease, to renew it;

- (i) where the charge is a second or subsequent charge, that the chargor will pay the interest from time to time accruing due on each prior charge when it becomes due, and will at the proper time repay the principal money due on each prior charge; and
- (j) where the chargor fails to comply with any of the agreements implied by paragraphs (b), (c), (d), (e), (g) and (h) of this section that the chargee may spend such money as is necessary to remedy the breach, and may add the amount so spent to the principal money, and that thereupon the amount shall be deemed for all purposes to be part of the principal money secured by the charge.

**70.** Where a charge contains an agreement, express or implied, by the chargor with the chargee that he will not transfer the land, lease or charge charged or any part thereof without the written consent of the chargee, the agreement shall be noted in the register, and no transfer by the chargor shall be registered until the written consent of the chargee, verified in accordance with section 110 of this Ordinance, has been produced to the Registrar.

Chargee's consent to transfer.

**71.** The amount secured, the method of repayment, the rate of interest or the term of the charge may be varied by the registration of an instrument of variation executed by the parties to the charge, but no such variation shall affect the rights of the proprietor of any subsequent charge, unless he has consented to the variation in writing on the instrument of variation.

Variation of charges.

**72.** (1) Subject to the provisions of this section, a chargor, on payment of all money due and owing under the charge at the time of payment or on fulfilment of any condition secured thereby and on payment of any costs or expenses properly incurred by the chargee in exercising any power conferred on him by section 74 of this Ordinance, may redeem the charged land, lease or charge at any time before it has been sold under section 77 of this Ordinance, and any agreement or provision which purports to deprive the chargor of this right of redemption shall be void; and, for the purposes of this subsection, land, a lease or a charge shall be deemed to have been sold when a bid has been accepted at the auction sale.

Right of redemption.

(2) If the chargor wishes to redeem the charged land, lease or charge before the date specified in the charge for repayment, he shall be entitled to do so on payment to the chargee, in addition to any other money then due or owing under the charge, interest on the principal sum secured thereby up to that date.

(3) If the chargor seeks to redeem the charged land, lease or charge after the date specified in the charge, or where no such date is specified, he shall give the chargee three months' notice of his intention to redeem the charge or shall pay him three months' interest in lieu thereof.

(4) If at any time the chargor is entitled and desires to repay the money secured by the charge, and the chargee is absent or cannot be found, or the Registrar is satisfied that the charge cannot be discharged otherwise, the chargor may deposit the amount due with the Registrar in trust for the person entitled thereto, and thereupon the obligations of the chargor under the charge shall cease, and the Registrar shall cancel the registration of the charge and shall pay the amount deposited to the chargee if the chargee applies for it within six years of the date of deposit, and if the amount is not so paid it shall be paid into the consolidated fund.

**73.** On his tendering to the chargee such sums as would have been payable to the chargee if the chargor had sought to redeem the charge under section 72 of this Ordinance, any of the following persons, that is to say—

- (a) any person, other than the chargor, who has an interest in the land, lease or charge charged; or
- (b) any surety for the payment of the amount secured by the charge; or
- (c) any creditor of the chargor who has obtained a decree for sale of the charged land, lease or charge,

may require the chargee to transfer the charge to him.

**74. (1)** If default is made in payment of the principal sum or of any interest or any other periodical payment or of any part thereof, or in the performance or observance of any agreement expressed or implied in any charge, and continues for one month, the chargee may serve on the chargor notice in writing to pay the money owing or to perform and observe the agreement, as the case may be.

Right of third party to transfer of charge.

Chargee's remedies.

(2) If the chargor does not comply, within three months of the date of service, with a notice served on him under subsection (1) of this section, the chargee may—

- (a) appoint a receiver of the income of the charged property; or
- (b) sell the charged property:

Provided that a chargee who has appointed a receiver may not exercise the power of sale unless the chargor fails to comply, within three months of the date of service, with a further notice served on him under that subsection.

(3) The chargee shall be entitled to sue for the money secured by the charge in the following cases only—

- (a) where the chargor is bound to repay the same;
- (b) where, by any cause other than the wrongful act of the chargor or chargee, the charged property is wholly or partially destroyed or the security is rendered insufficient and the chargee has given the chargor a reasonable opportunity of providing further security which will render the whole security sufficient, and the chargor has failed to provide such security;
- (c) where the chargee is deprived of the whole or part of his security by, or in consequence of, the wrongful act or default of the chargor:

Provided that—

(i) in the case specified in paragraph (a) of this subsection—

(a) a transferee from the chargor shall not be liable to be sued for the money unless he has agreed with the chargee to pay the same; and

(b) no action shall be commenced until a notice served in accordance with subsection (1) of this section has expired;

(ii) the court may, at its discretion, stay a suit brought under paragraph (a) or paragraph (b) of this subsection, notwithstanding any agreement to the contrary, until the chargee has exhausted all his other remedies against the charged property, unless the chargee agrees to discharge the charge.

Chargee's  
powers of  
leasing.

75. (1) The proprietor of a charge of land or a lease who has appointed a receiver under the powers conferred on him by section 74 of this Ordinance<sup>Act</sup> shall, in the absence of any express provision to the contrary contained in the charge, have power, subject to the provisions of this Ordinance and of any other written law—

- (a) to grant leases in respect of the charged land or the land comprised in the charged lease or any part or parts thereof; and
- (b) to accept a surrender of any lease so granted and of any lease created by the chargor,

and may, for such purposes, execute in the place of the chargor any instrument required to effect such lease or surrender.

(2) Every lease granted by a chargee shall—

- (a) be made to take effect in possession not later than twelve months after its date;
- (b) reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without a fine or premium being obtained;
- (c) be for a term not exceeding twenty-one years; and
- (d) contain a declaration by the chargee that he has appointed a receiver, with the date of the appointment.

Appointment,  
powers,  
remuneration  
and duties  
of receiver.

76. (1) The appointment of a receiver under the powers conferred by section 74 of this Ordinance<sup>Act</sup> shall be in writing signed by the chargee.

(2) A receiver may be removed at any time and a new receiver appointed by writing signed by the chargee.

(3) A receiver appointed under this section shall be deemed to be the agent of the chargor for the purposes for which he is appointed; and the chargor shall be solely responsible for the receiver's acts and defaults unless the charge otherwise provides.

(4) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by action or otherwise, in the name of the chargor, and to give effectual receipts accordingly for the same.

(5) A person paying money to the receiver shall not be concerned to inquire into the validity of the receiver's appointment.

(6) The receiver shall be entitled to retain out of any money received by him all costs, charges and expenses incurred by him as receiver, and, for his remuneration, a commission at such rate, not exceeding five per cent of the gross amount of all moneys received, as is specified in his appointment, or if no rate is so specified at the rate of five per cent of that gross amount, or such other rate as the chargor and the chargee and other chargees, if any, agree or the court thinks fit to allow on application made by the receiver for that purpose.

(7) The receiver shall apply insurance money in making good the loss or damage in respect of which the money is received.

(8) Subject to the provisions of subsection (7) of this section, the receiver shall apply all money received by him in the following order of priority—

- (a) in discharge of all rents, rates, taxes and outgoings whatever affecting the charged property; and
- (b) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the charge in right whereof he is receiver; and
- (c) in payment of his commission, costs, charges and expenses and of the premiums on fire, life and other insurance, if any, properly payable under the charge instrument or under this Ordinance<sup>Act</sup>, and the cost of executing necessary or proper repairs directed in writing by the chargee; and
- (d) in payment of the interest accruing due in respect of any principal money due under the charge; and
- (e) in or towards the discharge of the money secured by the charge, if so directed in writing by the chargee,

and shall pay the residue, if any, of the money received by him to the person who, but for the appointment of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the charged property.

Power of  
sale.

77. (1) A chargee exercising his power of sale shall act in good faith and have regard to the interests of the chargor, and may sell or concur with any person in selling the charged land, lease or charge, or any part thereof, together or in lots, by public auction for a sum payable in one amount or by instalments, subject to such reserve price and conditions of sale as the chargee thinks fit, with power to buy in at the auction and to resell by public auction without being answerable for any loss occasioned thereby, and may himself bid at any auction.

(2) Where the chargor is in possession of the charged land or the land comprised in the charged lease, the chargee shall become entitled to recover possession of the land upon a bid being accepted at the auction sale.

(3) A transfer by a chargee in exercise of his power of sale shall be made in the prescribed form, and the Registrar may accept it as sufficient evidence that the power has been duly exercised, and any person suffering damage by an irregular exercise of the power shall have his remedy in damages only against the person exercising the power.

(4) Upon registration of such transfer, the interest of the chargor as described therein shall pass to and vest in the transferee freed and discharged from all liability on account of the charge, or on account of any other encumbrance to which the charge has priority (other than a lease, easement or profit to which the chargee has consented in writing).

(5) A chargee, in exercising his power of sale, shall have the same powers and rights in regard to easements and restrictive agreements as are conferred upon a proprietor by sections 94 and 95 of this ~~Ordinance~~ <sup>Act</sup>.

Application  
of purchase  
money.

78. The purchase money received by a chargee who has exercised his power of sale, after discharge of any prior encumbrances to which the sale is not made subject or after payment into court of a sum sufficient to meet any such prior encumbrances, shall be applied—

- (a) first, in payment of all costs and expenses properly incurred and incidental to the sale or any attempted sale;
- (b) secondly, in accordance with any express provision in the charge (as required by section 65 (5) of this ~~Ordinance~~ <sup>Act</sup>) for disposing of such money and, in the

absence of any such express provision, in discharge of the money due to the chargee at the date of the sale; and

(c) thirdly, in payment of any subsequent charges in the order of their priority,

and the residue of the money so received shall be paid to the person who immediately before the sale was entitled to redeem the charged land, lease or charge.

**79.** The provisions of sections 72 (2) and (3), 74, 75, 76 and 77 of this Ordinance may in their application to a charge be varied or added to in the charge:

Variation of powers.

Provided that any such variation or addition shall not be acted upon, except where the chargee is the Land and Agricultural Bank of Kenya or the Settlement Fund Trustees, unless the court, having regard to the proceedings and conduct of the parties and to the circumstances of the case, so orders.

**80.** For the avoidance of doubt, it is hereby declared that the chargee shall not be entitled to foreclose, nor to enter into possession of the charged land or the land comprised in a charged lease or to receive the rents and profits thereof by reason only that default has been made in the payment of the principal sum or of any interest or other periodical payment or of any part thereof or in the performance or observance of any agreement expressed or implied in the charge.

No right of entry into possession or foreclosure.

**81.** (1) A discharge, whether of the whole or of a part of a charge, shall be made by an instrument in the prescribed form, or (if of the whole) the word "Discharged" may be endorsed on the charge or the duplicate or triplicate and the endorsement executed by the chargee and dated.

Discharge of charge.

(2) A discharge shall be completed by cancellation in the register of the charge, or part thereof as the case may require, and filing the instrument of discharge or the endorsed charge.

**82.** Upon proof to the satisfaction of the Registrar—

Satisfaction of charges.

(a) that all money due under a charge has been paid to the chargee or by his direction; or

(b) that the event or circumstance has occurred upon which, in accordance with the provisions of any charge, the money thereby secured ceases to be payable, and that no money is owing under the charge,

the Registrar shall order the charge to be cancelled in the register, and thereupon the land, lease or charge shall cease to be subject to the charge.

**83.** (1) Provision may be made in the charge for a chargee to make further advances or give credit to the chargor on a current or continuing account, but, unless that provision is noted in the register, further advances shall not rank in priority to any subsequent charge except with the consent in writing of the proprietor of the subsequent charge.

(2) Except as provided in this section, there is no right to tack.

**84.** A chargee has no right to consolidate his charge with any other charge unless the right is expressly reserved in the charges or in one of them and is noted in the register against all the charges so consolidated.

#### *Division 4—Transfers*

**85.** (1) A proprietor may transfer his land, lease or charge to any person (including himself), with or without consideration, by an instrument in the prescribed form.

(2) The transfer shall be completed by registration of the transferee as proprietor of the land, lease or charge and by filing the instrument.

(3) The transferee of a charge may require the chargor to execute the transfer for the purpose of acknowledging the amount due under the charge at the date of execution of the transfer.

**86.** The Registrar shall not register any instrument purporting to transfer or to vest any land, or a lease of land, situated within the area of a rating authority unless there is produced to the Registrar a written statement by the authority that all rates and other charges payable to the authority in respect of the land for the last twelve years have been paid, expressed to be available until the day upon which, or until a day not earlier than that upon which, the instrument was registered:

Provided that no such statement shall be required where the instrument relates to—

- (i) land which is subject to a lease, and the leasehold interest is, by virtue of any written law, the rateable property; or

Tacking and further advances.

Consolidation.

Transfer.

Certificates as to payment of rates.

- (ii) a lease, and the land or another leasehold interest is, by virtue of any written law, the rateable property.

**87.** A transfer shall not be expressed to take effect on the happening of any event or on the fulfilment of any condition or at any future time.

Transfer to take effect immediately.

**88.** (1) Any condition or limitation purporting to restrain absolutely a transferee or any person claiming under him from disposing of the interest transferred is void.

Conditions repugnant to interest transferred.

(2) Subject to section 12 of the Trusts of Land <sup>Act</sup> Ordinance, any condition or limitation made in relation to a transfer which purports to determine the interest of the transferee on the happening of any future event or on the failure of any future event to happen is void.

Cap. 290.

(3) Except as provided in Division 5 of this Part, no transfer of land shall contain a direction that the land shall be used or enjoyed by the transferee in a particular manner.

(4) This section does not apply to Wakfs.

**89.** No part of the land comprised in a register shall be transferred unless the proprietor has first subdivided the land and new registers have been opened in respect of each subdivision.

Transfer of part.

**90.** On the transfer of a lease, unless the contrary is expressed in the transfer, there shall be implied—

Transfers of leases.

(a) a warranty on the part of the transferor that the rent, agreements and conditions on the part of the lessee to be paid, performed and observed have been so paid, performed and observed up to the date specified in the transfer or, if no such date is specified, the date of the transfer; and

(b) an agreement on the part of the transferee to pay the said rent as from the day following the date specified in the transfer or the date of the transfer, as the case may be, and to perform and observe the said agreements and conditions.

Effect of  
transfer on  
agreements  
in leases.

**91.** A transferee from a lessor or from a lessee shall possess all the rights, and be subject to all the liabilities, of the lessor or lessee, as the case may be, expressed or implied in the lease, or arising or which have arisen thereunder, and the transferor shall cease to be under any obligation or possessed of any rights in respect of the lease:

Provided that nothing in this section shall affect the rights or liabilities of the lessor or lessee, as the case may be, in respect of a breach of any of the agreements expressed or implied in the lease which occurred before the transfer.

Transfer  
subject to  
charge.

**92.** In every transfer of land or a lease subject to a charge, there shall be implied an agreement by the transferee with the transferor to pay the interest secured by the charge at the rate and at the times and in the manner specified in the charge and to keep the transferor indemnified against the principal sum secured by the charge and against all liability in respect of any of the agreements on the part of the transferor therein contained or implied.

Transfer  
subject to  
lease.

**93.** A transfer of land which is subject to a lease shall be valid without the lessee acknowledging the transferee as lessor, but nothing in this section—

- (a) affects the validity of any payment of rent made by the lessee to the transferor; or
- (b) renders the lessee liable, on account of his failure to pay rent to the transferee, for any breach of agreement to pay rent,

before notice of the transfer is given to the lessee by the transferee.

#### *Division 5—Easements, Restrictive Agreements, Profits and Licences*

Easements.

**94.** (1) The proprietor of land or a lease may, by an instrument in the prescribed form, grant an easement over his land or the land comprised in his lease, to the proprietor or lessee of other land for the benefit of that other land.

(2) Any proprietor transferring or leasing land or a lease may in the transfer or lease grant an easement, for the benefit of the land transferred or leased, over land retained by him, or reserve an easement for the benefit of land retained by him.

(3) The instrument creating the easement shall specify clearly—

(a) the nature of the easement, the period for which it is granted and any conditions, limitations or restrictions intended to affect its enjoyment; and

(b) the land burdened by the easement and, if required by the Registrar, the particular part thereof so burdened; and

(c) the land which enjoys the benefit of the easement,

and shall, if so required by the Registrar, include a plan sufficient in the Registrar's estimation to define the easement.

(4) The grant or reservation of the easement shall be completed by its registration as an encumbrance in the register of the land burdened and in the property section of the land which benefits, and by filing the instrument.

(5) An easement granted by the proprietor of a lease shall be capable of existing only during the subsistence of the lease.

**95.** (1) Where an instrument, other than a lease or charge, contains an agreement (hereinafter referred to as a restrictive agreement) by one proprietor restricting the building on or the user or other enjoyment of his land for the benefit of the proprietor of other land, and is presented to the Registrar, the Registrar shall note the restrictive agreement in the encumbrances section of the register of the land or lease burdened by the restrictive agreement, either by entering particulars of the agreement or by referring to the instrument containing the agreement, and shall file the instrument.

Restrictive  
agreements.

(2) Unless it is noted in the register, a restrictive agreement is not binding on the proprietor of the land or lease burdened by it or on anybody acquiring the land or lease.

(3) The note of a restrictive agreement in the register does not give the restrictive agreement any greater force or validity than it would have had if it had not been registrable under this Ordinance and had not been noted.

(4) In so far as the restrictive agreement is capable of taking effect, not only the proprietors themselves but also their respective successors in title shall be entitled to the benefit and subject to the burden of it respectively, unless the instrument otherwise provides.

(5) Notwithstanding the provisions of this section or of any other written law, any agreement, condition or restriction contained in any instrument (whether executed before or after **the commencement** of this <sup>Act</sup> Ordinance) whereby persons who are members of a particular race or who are not members of a particular race are prohibited or prevented from owning or from occupying any land or from acquiring an interest therein shall be void.

Profits.

**96.** (1) The proprietor of land or a lease may, by an instrument in the prescribed form, grant a profit.

(2) The instrument shall indicate clearly the nature of the profit, the period for which it is to be enjoyed and—

- (a) whether it is to be enjoyed in gross, or as appurtenant to other land or a lease; and
- (b) whether it is to be enjoyed by the grantee exclusively, or by him in common with the grantor.

(3) The grant of a profit shall be completed—

- (a) by its registration as an encumbrance in the register of the land or lease which it affects; and
- (b) where it is appurtenant to other land or a lease, by its registration in the property section of the register of the land or lease to which it is appurtenant; and
- (c) by filing the instrument.

(4) A profit which is not appurtenant to land may be dealt with as though it were land.

(5) A profit granted by the proprietor of a lease shall be capable of subsisting only during the subsistence of the lease.

**97.** (1) Upon presentation of a duly executed release in the prescribed form, the registration of the easement, profit or restrictive agreement shall be cancelled, and thereupon the easement, profit or restrictive agreement becomes extinguished.

(2) On the application of any person affected thereby, the Registrar may cancel the registration of an easement, profit or restrictive agreement upon proof to his satisfaction that—

- (a) the period of time for which it was intended to subsist has expired; or
- (b) the event upon which it was intended to determine has occurred.

Release and extinguishment of easements, profits and restrictive agreements.

**98.** (1) The court has power, on the application of any person interested in land affected by an easement, restrictive agreement or profit (whether created before or after the commencement of this <sup>Act</sup> Ordinance) by order wholly or partially to extinguish or modify the easement, profit or restrictive agreement (with or without payment by the applicant of compensation to any person suffering loss in consequence of the order), on being satisfied—

Discharge and modification of easements, profits and restrictive agreements.

(a) that, by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the court deems material, the easement, profit or restrictive agreement ought to be held to be obsolete; or

(b) that the continued existence of the easement, profit or restrictive agreement impedes the reasonable user of the land for public or private purposes without securing practical benefits to other persons or, as the case may be, will unless modified so impede such user; or

(c) that the proposed discharge or modification will not injure the person entitled to the benefit of the easement, profit or restrictive agreement.

(2) Subsection (1) of this section applies also to a restrictive agreement contained in a lease (whether created before or after the commencement of this <sup>Act</sup> Ordinance) for a certain period exceeding seventy years where more than fifty years of that period have expired, but otherwise that subsection shall not apply to a restrictive agreement contained in a lease or charge.

**99.** Nothing in this <sup>Act</sup> Ordinance shall be construed as altering any rule or principle of law which implies in the grant of an easement such ancillary rights as are necessary for effective enjoyment of the easement.

Saving of certain rights.

**100.** (1) Without prejudice to section 131 of this Ordinance, a licence is not capable of registration.

Licences.

(2) A licence relating to the use or enjoyment of land is ineffective against a bona fide purchaser for valuable consideration unless the licensee has protected his interest by lodging a caution under that section.

*Division 6—Co-proprietorship and Partition*

Registration  
of more than  
one proprietor.

**101.** (1) An instrument made in favour of two or more persons, and the registration giving effect to it, shall show—

- (a) whether such persons are joint proprietors or proprietors in common; and
- (b) where they are proprietors in common, the share of each proprietor.

(2) Not more than one person may be registered as the proprietor of any parcel of which the Central Land Board has at any earlier time been registered as the proprietor.

(3) Subject to subsection (2) of this section the Minister may for any registration section with the consent of the county council (if any) concerned and of the Regional Assembly of the region in which the registration section is situated, prescribe either—

- (a) the maximum number (whether one or a greater number) of persons who are allowed to be registered in the same register as proprietors; or
- (b) the maximum denominator of the vulgar fraction which expresses the share of any proprietor,

or both of them, and no dealing shall be registered if its effect would be that that number or that denominator, as the case may be, would be exceeded.

(4) Until the Minister otherwise prescribes under subsection (3) of this section, no dealing in respect of land in the special areas shall be registered which, if registered, would have the effect of vesting any parcel of land or a lease or charge in more than five proprietors.

**102.** (1) Where the land, lease or charge is owned jointly, no proprietor is entitled to any separate share in the land, and consequently—

- (a) dispositions may be made only by all the joint proprietors; and
- (b) on the death of a joint proprietor, his interest shall vest in the surviving proprietor or the surviving proprietors jointly.

(2) For avoidance of doubt, it is hereby declared that—

- (a) the sole proprietor of any land, lease or charge may transfer the same to himself and another person jointly; and

Characteristics  
of joint  
proprietorship  
and severance  
thereof.

(b) a joint proprietor of any land, lease or charge may transfer his interest therein to all the other proprietors.

(3) Joint proprietors, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joint proprietorship, and the severance shall be completed by registration of the joint proprietors as proprietors in common and by filing the instrument.

**103.** (1) Where any land, lease or charge is owned in common, each proprietor shall be entitled to an undivided share in the whole, and on the death of a proprietor his share shall be administered as part of his estate.

Characteristics of proprietorship in common.

(2) No proprietor in common shall deal with his undivided share in favour of any person other than another proprietor in common of the same land, except with the consent in writing of the remaining proprietor or proprietors of the land, but such consent shall not be unreasonably withheld.

**104.** (1) An application in the prescribed form to the Registrar for the partition of the land owned in common may be made by—

Partition.

(a) any one or more of the proprietors; or

(b) any person in whose favour an order has been made for the sale of an undivided share in the land in execution of a decree,

and, subject to the provisions of this Ordinance and of any written law by or under which minimum areas or frontages are prescribed or the consent of any authority to a partition is required, the Registrar shall effect the partition of the land in accordance with any agreement of the proprietors in common or, in the absence of agreement, in such manner as the Registrar may determine.

(2) Partition shall be completed by closing the register of the parcel partitioned and opening registers in respect of the new parcels created by the partition and filing the agreement or determination.

**105.** (1) Where for any reason the land sought to be partitioned is incapable of partition or the partition would adversely affect the proper use of the land, and a demand is made by the applicant or one or more of the other proprietors in common that the land or any share or shares in the land

When Registrar may order sale.

be sold, the Registrar shall, in default of any agreement between the proprietors in common, value the land and the shares of the proprietors in common and order the sale of the land or the separation and sale of such shares by public auction or make such other order for the disposal of the application as he thinks fit.

(2) A proprietor in common shall be entitled to purchase the land or any share so offered for sale, either at the auction or at any time by private treaty.

Procedure  
where share  
small.

**106.** (1) Where the land sought to be partitioned is capable of partition generally, but the resultant share of any particular proprietor in common would be less in area than any minimum prescribed by or under any written law, the Registrar shall add such share to the share of any other proprietor or distribute such share amongst two or more other proprietors in such manner and in such proportions as, in default of agreement, he thinks fit.

(2) Where the Registrar proceeds in accordance with subsection (1) of this section, he shall assess the value of the share added or distributed and shall order that there be paid to the proprietor of the share by each proprietor who has received an addition to his share the value of such addition.

(3) Where any sum is payable under subsection (2) of this section by any proprietor in common to any other proprietor in common, the Registrar may order that such sum be secured by way of charge on the share of the person liable to pay it.

#### *Division 7—Succession on Death*

Succession  
on death.

**107.** <sup>Act</sup> Subject to Part VII of this <sup>Act</sup> Ordinance, nothing in this Ordinance affects the law of testate or intestate succession.

#### **PART VI—INSTRUMENTS AND AGENTS**

Form of  
instruments.

**108.** (1) Every disposition of land, a lease or a charge shall be effected by an instrument in the prescribed form or in such other form as the Registrar may in any particular case approve, and every person shall use a printed form issued by the Registrar unless the Registrar otherwise permits.

(2) Leases and charges shall be presented for registration in triplicate.

(3) Instruments shall contain a true statement of the amount or value of the purchase price or loan or other consideration (if any), and an acknowledgement of the receipt of the consideration.

**109.** (1) Every instrument evidencing a disposition shall be executed by all persons shown by the register to be proprietors of the interest affected and by all other parties to the instrument:

Execution of instruments.

Provided that the Registrar may dispense with execution by any particular party (other than the donee under a disposition by way of gift) where he considers that such execution is unnecessary.

(2) Subject to section 124 (2) of this <sup>Act</sup> Ordinance, an instrument shall be deemed to have been executed only—

(a) by a natural person, if signed by him;

(b) by a corporation—

(i) if sealed with the common seal of the corporation, affixed thereto in the presence of and attested by its clerk, secretary or other permanent officer and by a member of the board of directors, council or other governing body of the corporation; or

(ii) in the case of a corporation not required by law to have a common seal, if signed by such persons as are authorized in that behalf by any law or by the statute or charter of the corporation or, in the absence of any express provision, by the persons duly appointed in writing for that purpose by the corporation, evidence of which appointment has been produced to the satisfaction of the Registrar.

**110.** (1) Subject to subsection (3) of this section, a person executing an instrument shall appear before the Registrar or such public officer or other person as is prescribed and, unless he is known to the Registrar or such public officer or other person, shall be accompanied by a credible witness for the purpose of establishing his identity.

Verification of execution.

(2) The Registrar or public officer or other person shall satisfy himself as to the identity of the person appearing before him and ascertain whether he freely and voluntarily executed the instrument, and shall complete thereon a certificate to that effect.

(3) The Registrar may dispense with verification under this section—

- (a) if he considers that it cannot be obtained or can be obtained only with difficulty and he is otherwise satisfied that the document has been properly executed; or
- (b) in cases in which to his knowledge the document has been properly executed,

and shall record on the document his reasons for dispensing with the appearance of the parties.

(4) No instrument executed out of Kenya shall be registered unless it has endorsed thereon or attached thereto a certificate in the prescribed form completed—

- (a) if the instrument was executed in the Commonwealth, by a judge, magistrate, justice of the peace, notary public, commissioner for oaths or administrative officer;
- (b) if the instrument was executed in a foreign country, by a British consular officer or pro-consul or such other person or class of persons as the Minister may determine.

Stamps.

**111.** No instrument required by law to be stamped shall be accepted for registration unless it is duly stamped.

Disposal of instruments.

**112.** (1) Subject to subsection (2) of this section and to section 114 (2) of this Ordinance, all instruments accepted by the Registrar shall be retained in the registry for as long as they support a current entry in the register and for six years thereafter.

(2) When a lease or charge is registered, particulars of registration shall be noted on the duplicate and the triplicate thereof, and the duplicate and the triplicate shall be returned to the person who presented them.

(3) After six years after an entry in the register has been superseded or has ceased to have any effect, the Registrar may destroy any instrument which supported the entry.

Minors.

**113.** (1) For the avoidance of doubt, it is hereby declared that the name of a person under the age of twenty-one years may be entered in the register either on first registration or as a transferee or on transmission.

(2) Nothing in this section enables any such person to deal with land or any interest in land by virtue of such registration, and, where to his knowledge a minor is registered, the Registrar shall enter a restriction accordingly.

(3) Where a disposition by a minor whose minority has not been disclosed to the Registrar has been registered, such disposition may not be set aside only on the grounds of minority.

**114.** (1) Except as provided in subsection (3) of this section, no instrument executed by any person as agent for any other person shall be accepted by the Registrar unless the person executing it was authorized in that behalf by a power of attorney executed and <sup>ACC</sup>verified in accordance with sections 109 and 110 of this Ordinance.

Agents and persons under disability.

(2) The original of such power of attorney or, with the consent of the Registrar, a copy thereof certified by the Registrar shall be filed.

(3) Where any person who, if not under a disability, might have made any application, done any act or been a party to any proceeding under this Ordinance or under any rules made thereunder is a minor, a person of unsound mind or a person under any other disability, the guardian of such person, or if there is no such guardian a person appointed under some written law to represent that person, may make any application, do any act and be party to any proceeding on behalf of that person, and shall <sup>ACC</sup>generally represent that person for the purposes of this Ordinance.

(4) Before accepting any document executed by a guardian or a person so appointed to represent a person under a disability, the Registrar shall satisfy himself that the person claiming to be the guardian is entitled to execute the document or require the production of the appointment of the person so appointed, and shall file a note of the explanation which satisfied him or a copy of the appointment, as the case may be.

**115.** A person under a disability who has been registered as proprietor of land, a lease or a charge acquired by him by way of gift may, within six months after he ceases to be under

Gift to person under disability.

a disability, repudiate the gift if he has not already disposed of the subject-matter thereof, but no such repudiation shall be effective until—

- (a) he has transferred the land, lease or charge to the donor, who is bound to accept it; and
- (b) the transfer has been registered.

**116.** (1) Upon the application of the donor or the donee of a power of attorney which contains any power to dispose of any interest in land, such power of attorney shall be entered in the register of powers of attorney and the original, or with the consent of the Registrar a copy thereof certified by the Registrar, shall be filed in the file of powers of attorney.

(2) Every such power of attorney shall be in the prescribed form or such other form as the Registrar may in any particular case approve, and shall be executed and verified in accordance with sections 109 and 110 of this Ordinance.

(3) The donor of a power of attorney registered under this section may at any time give notice to the Registrar in the prescribed form that the power has been revoked, and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power, and the notice shall be filed in the file of powers of attorney.

(4) Any interested person may give notice in writing to the Registrar that a power of attorney which has been registered under subsection (1) of this section has been revoked by the death, bankruptcy or disability of the donor or the death or disability of the donee, accompanied by such evidence as the Registrar requires, and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power, and the notice shall be filed in the file of powers of attorney.

(5) Subsections (3) and (4) of this section do not apply to a power of attorney given for valuable consideration during any time during which it is, by virtue of the terms thereof, irrevocable.

(6) If owing to the length of time since the execution of a power of attorney or for any other reason the Registrar considers it desirable, he may require evidence that the power has not been revoked, and may refuse to register any disposition by the donee of the power of attorney until satisfactory evidence is produced.

**117.** (1) A power of attorney which has been registered under section 116 of this <sup>Act</sup> Ordinance and of which no notice of revocation has been registered under that section shall be deemed to be subsisting as regards any person acquiring any interest in land affected by the exercise of the power, for valuable consideration and without notice of revocation and in good faith, or any person deriving title under such a person.

Effect of registered power of attorney.

(2) Any person making any payment or doing any act in good faith in pursuance of a power of attorney registered under section 116 of this <sup>Act</sup> Ordinance shall not be liable in respect of the payment or act by reason only that before the payment or act the donor of the power had died or become subject to a disability or become bankrupt, or had revoked the power, if the fact of death, disability, bankruptcy or revocation was not at the time of the payment or act known to the person making or doing the payment or act.

#### PART VII—TRANSMISSIONS AND TRUSTS

**118.** If one of two or more joint proprietors of any land, lease or charge dies, the Registrar, on proof to his satisfaction of the death, shall delete the name of the deceased from the register.

Transmission on death of joint proprietor.

**119.** (1) If a sole proprietor or a proprietor in common dies, his personal representative, on application to the Registrar in the prescribed form and on production to him of the grant, shall be entitled to be registered by transmission as proprietor in the place of the deceased with the addition after his name of the words "as executor of the will of ..... deceased" or "as administrator of the estate of ..... deceased", as the case may be.

Transmission on death of sole proprietor or proprietor in common.

(2) Upon production of a grant, the Registrar may, without requiring the personal representative to be registered, register by transmission—

(a) any transfer by the personal representative;

(b) any surrender of a lease or discharge of a charge by the personal representative.

(3) In this section, "grant" means the grant of probate of the will, the grant of letters of administration of the estate or the grant of summary administration of the estate in favour of or issued by the Public Trustee, as the case may be, of the deceased proprietor.

Transmission  
on death  
intestate of  
proprietor  
subject to  
African  
customary law.

**120.** (1) Where a proprietor dies intestate and is subject to African customary law relating to succession on death, this section shall apply, and a certificate signed by an administrative officer to the effect that a proprietor was so subject at the date of his death shall, when delivered to the Registrar and filed, be conclusive evidence that the deceased proprietor was so subject.

(2) Upon being informed of the death of a proprietor intestate, the Registrar, after satisfying himself of the death of the proprietor, shall apply to the African court for the determination of the heirs, and the African court shall determine who are the persons entitled, according to the customary law applicable to the deceased proprietor, to any land, lease or charge of the deceased proprietor, and the nature and extent of their respective shares, and shall thereafter issue a certificate in the prescribed form (hereinafter referred to as a certificate of succession) certifying the names of the persons so entitled and the nature and extent of their respective shares.

(3) The African court shall send the certificate of succession to the Registrar, who shall, subject to the provisions of this ~~Ordinance~~<sup>Act</sup>, give effect to its terms by registering as proprietor of the land, lease or charge any person who appears from the certificate to be entitled thereto; and the certificate shall be filed.

(4) The Registrar shall not give effect to a certificate of succession under this section unless—

- (a) the certificate is accompanied by the certificate of the Estate Duty Commissioner that the requirements of the Estate Duty ~~Ordinance~~<sup>Act</sup>, 1963, in regard to the payment of estate duty have been or will be complied with or that no estate duty is payable; and
- (b) thirty days have elapsed since the date shown on the certificate of succession.

(5) If a certificate of succession shows a person or persons to be entitled to a divided share or shares in the land of a deceased proprietor, the Registrar shall, before giving effect to the certificate, and subject to the provisions of any written law which requires the consent of any authority to the partition or subdivision of land, effect the division of the land.

(6) If a certificate of succession does not comply with the law governing the parcel in question because—

(a) its registration would contravene subsection (2), subsection (3) or subsection (4) of section 101 of this Ordinance; or

(b) the division of the parcel under subsection (5) of this section cannot be effected by reason of any written law or for any other reason,

the Registrar shall return the certificate to the African court, and that court shall issue a fresh certificate which does so comply.

(7) (a) When an African court proceeds under subsection (6) of this section, it may add the share of any entitled person to the share of any other entitled person or distribute such share amongst two or more entitled persons in accordance with any agreement which may be made between such persons or, in the absence of agreement, in such manner and in such proportions as that court thinks fit, with such compensation, if any, as it may determine to be proper to be paid by the person who benefits by the addition to any person adversely affected thereby, and the court may order that such compensation be secured by way of charge on the share of the person who benefits by the addition.

(b) In paragraph (a) of this subsection, “entitled person” means a person who is entitled to a share under the original certificate of succession.

(8) Where a proprietor dies and the African court is satisfied that there is no person lawfully entitled to any land, lease or charge of the deceased proprietor, the African court shall issue a certificate to that effect and shall send it to the Registrar, and the Registrar shall register the county council as proprietor of such land, lease or charge and the certificate shall be filed.

**121.** (1) Where the Registrar has applied to an African court under section 120 (2) of this Ordinance for the determination of heirs, and at the end of one year from the date of application that court for any reason has not issued a certificate of succession, that court shall send to him a notification that it has not issued a certificate of succession, giving the reasons therefor.

Transmission where successors not determined.

(2) Where the Registrar receives a notification under subsection (1) of this section, he shall advertise its receipt in the prescribed manner.

(3) After the expiration of thirty days from the date of the advertisement, the Registrar shall register the county council as proprietor of the land, lease or charge, subject to any registered encumbrances and to any overriding interests or other liabilities to which it is subject, as trustee for sale, in trust for the heirs, and shall file the notification.

(4) For so long as the county council is registered under subsection (3) of this section, it shall not be liable for any waste committed or permitted in relation to the land, lease or charge.

(5) Nothing in this section shall prevent the subsequent issue of a certificate of succession, and, where the county council is registered as proprietor of the land, lease or charge of the deceased proprietor, the certificate shall be given effect to in accordance with section 120 of this Ordinance, and upon the registration, as proprietor, of the person certified to be entitled to the land, lease or charge, or to a part thereof, the interest of the Trust Land Board shall determine and cease absolutely, or shall determine and cease absolutely as respects that part.

**122.** (1) Subject to any restriction on his power of disposing of the land, lease or charge contained in his appointment, the personal representative or the person beneficially entitled on the death of the deceased proprietor, as the case may be, shall hold the land, lease or charge subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the deceased proprietor held the same, but for the purpose of any dealing he shall be deemed to have been registered as proprietor thereof with all the rights conferred by this Ordinance on a proprietor who has acquired land, a lease or a charge, as the case may be, for valuable consideration.

(2) The registration of any person as aforesaid shall relate back to and take effect from the date of the death of the proprietor.

**123.** (1) A trustee in bankruptcy shall, upon production to the Registrar of a certified copy of the order of court adjudging a proprietor bankrupt, or directing that the estate of a deceased proprietor shall be administered according to the

Effect of  
transmission  
on death.

Transmission  
on bankruptcy.

law of bankruptcy, be registered as proprietor of any land, lease or charge of which the bankrupt or deceased proprietor is proprietor, in his place, and a copy of the order shall be filed.

(2) A trustee in bankruptcy shall be described in the register as "trustee of the property of ....., a bankrupt".

(3) The trustee in bankruptcy shall hold any land, lease or charge of which he is registered as proprietor subject to any restrictions contained in the Bankruptcy Ordinance<sup>Act</sup> or in any order of court and subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the bankrupt or the deceased proprietor held the same, but for the purpose of any dealing with such land, lease or charge the trustee in bankruptcy shall have all the rights and be subject to all the limitations conferred or imposed by this or any other written law on a proprietor who has acquired land, a lease or a charge for valuable consideration.

Cap. 53.

**124.** (1) Where a company is being wound up, the liquidator shall—

Liquidation.

(a) produce to the Registrar any resolution or order appointing him liquidator; and

(b) satisfy the Registrar that he has complied with section 237 of the Companies Ordinance<sup>Act</sup>,

Cap. 486.

and the Registrar shall enter the appointment in respect of any land, lease or charge of which the company is registered as proprietor, and shall file the copy of the resolution or order.

(2) An instrument executed by or on behalf of a company in liquidation delivered for registration after the appointment of the liquidator has been entered under subsection (1) of this section shall be sealed with the common seal of the company and attested by the liquidator or, in the case of a company not required by law to have a common seal, shall be signed by the liquidator whose signature shall be verified in accordance with section 110 of this Ordinance<sup>Act</sup>.

(3) Where a vesting order has been made under section 240 of the Companies Ordinance<sup>Act</sup>, the liquidator shall present the order and the Registrar shall register the liquidator as proprietor of any land, lease or charge to which the order relates.

Transmission  
in other  
cases.

**125.** Where any person has become entitled to any land, lease or charge under any law or by virtue of any order or certificate of sale made or issued under any law, the Registrar shall, on the application of any interested person supported by such evidence as he may require, register the person entitled, as the proprietor.

Trusts not to  
be entered.

**126.** (1) A person acquiring land, a lease or a charge in a fiduciary capacity may be described by that capacity in the instrument of acquisition and, if so described, shall be registered with the addition of the words "as trustee", but the Registrar shall not enter particulars of any trust in the register.

(2) An instrument which declares or is deemed to declare any trust, or a certified copy thereof, may be deposited with the Registrar for safe custody; but such instrument or copy shall not form part of the register or be deemed to be registered.

(3) Where the proprietor of land, a lease or a charge is a trustee, he shall hold the same subject to any unregistered liabilities, rights or interests to which it is subject by virtue of the instrument creating the trust, but for the purpose of any registered dealings he shall be deemed to be the absolute proprietor thereof, and no person dealing with the land, a lease or a charge so registered shall be deemed to have notice of the trust, nor shall any breach of the trust create any right to indemnity under this Ordinance.

Survivor  
of trustees.

**127.** Whenever two or more proprietors are registered jointly as trustees, and the survivor of such proprietors would not be entitled to exercise alone the powers which were vested in them, the Registrar shall enter a restriction to that effect.

## PART VIII—RESTRAINTS ON DISPOSITION

### *Division 1—Inhibitions*

Power of court  
to inhibit  
registered  
dealings.

**128.** (1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until further order, the registration of any dealing with any land, lease or charge.

(2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected thereby, shall be sent to the Registrar, who shall register it in the appropriate register, and no inhibition shall bind or affect the land, lease or charge until it has been registered.

**129.** So long as an inhibition remains registered, no instrument which is inconsistent with it shall be registered.

Effect of inhibition.

**130.** The registration of an inhibition shall be cancelled in the following cases and in no others—

Cancellation of inhibition.

- (a) on the expiration of the time limited by the inhibition; or
- (b) on proof to the satisfaction of the Registrar of the occurrence of the event named in the inhibition; or
- (c) on the land, lease or charge being sold by a chargee, unless such sale is itself inhibited; or
- (d) by order of the court.

#### *Division 2—Cautions*

**131.** (1) Any person who—

Lodging of cautions.

- (a) claims the right, whether contractual or otherwise, to obtain an interest in any land, lease or charge, that is to say, some defined interest capable of creation by an instrument registrable under this ~~Ordinance~~<sup>Act</sup>; or
- (b) is entitled to a licence; or
- (c) has presented a bankruptcy petition against the proprietor of any registered land, lease or charge,

may lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the same.

(2) A caution may either—

- (a) forbid the registration of dispositions and the making of entries altogether; or
- (b) forbid the registration of dispositions and the making of entries to the extent therein expressed.

(3) A caution shall be in the prescribed form, and the Registrar may require the cautioner to support it by a statutory declaration.

(4) The Registrar may reject a caution which he considers unnecessary or whose purpose he considers can be effected by the registration of an instrument under this ~~Ordinance~~<sup>Act</sup>.

(5) Subject to the provisions of this section, the caution shall be registered in the appropriate register.

Notice, and effect of caution.

**132.** (1) The Registrar shall give notice in writing of a caution to the proprietor whose land, lease or charge is affected by it.

(2) So long as a caution remains registered, no disposition which is inconsistent with it shall be registered except with the consent of the cautioner or by order of the court.

Withdrawal and removal of caution.

**133.** (1) A caution may be withdrawn by the cautioner or removed by order of the court or, subject to the provisions of subsection (2) of this section, by order of the Registrar.

(2) (a) The Registrar may, on the application of any person interested, serve notice on the cautioner warning him that his caution will be removed at the expiration of the time stated in the notice.

(b) If at the expiration of the time stated the cautioner has not objected, the Registrar may remove the caution.

(c) If the cautioner objects to the removal of the caution, he shall notify the Registrar in writing of his objection within the time specified in the notice, and the Registrar, after giving the parties an opportunity of being heard, shall make such order as he thinks fit, and may in the order make provision for the payment of costs.

(3) On registration of a transfer by a chargee in exercise of his power of sale under section 77 of this Ordinance, the Registrar shall remove any caution which purports to prohibit any dealing by the chargor and which was registered after the charge by virtue of which the transfer has been effected.

(4) On the withdrawal or removal of a caution, its registration shall be cancelled, but any liability of the cautioner previously incurred under section 135 of this Ordinance shall not be affected by the cancellation.

Second caution in respect of same matter.

**134.** The Registrar may refuse to accept a further caution by the same person or anyone on his behalf in relation to the same matter as a previous caution.

Wrongful cautions.

**135.** Any person who lodges or maintains a caution wrongfully and without reasonable cause shall be liable, in an action for damages at the suit of any person who has thereby sustained damage, to pay compensation to such person.

## Division 3—Restrictions

**136.** (1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, after directing such inquiries to be made and notices to be served and hearing such persons as he thinks fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.

Restrictions.

(2) A restriction may be expressed to endure—

(a) for a particular period; or

(b) until the occurrence of a particular event; or

(c) until the making of a further order,

and may prohibit or restrict all dealings or only such dealings as do not comply with specified conditions, and the restriction shall be registered in the appropriate register.

(3) The Registrar shall make a restriction in any case where it appears to him that the power of the proprietor to deal with the land, lease or charge is restricted.

**137.** (1) The Registrar shall give notice in writing of a restriction to the proprietor affected thereby.

Notice, and effect of restriction.

(2) So long as any restriction remains registered, no instrument which is inconsistent with it shall be registered except by order of the court or of the Registrar.

**138.** (1) The Registrar may at any time, upon application by any person interested or of his own motion, and after giving the parties affected thereby an opportunity of being heard, order the removal or variation of a restriction.

Removal and variation of restrictions.

(2) Upon the application of any proprietor affected by a restriction, and upon notice thereof to the Registrar, the court may order a restriction to be removed or varied, or make such other order as it thinks fit, and may make an order as to costs.

## PART IX—PRESCRIPTION

**139.** (1) Subject to sections 140 and 141 of this Ordinance, where—

Means by which easements and profits may be acquired.

(a) the access and use of light or air to and for any building have been peaceably and openly enjoyed with the building as an easement and as of right, without interruption, for twenty years; or

- (b) any way or watercourse, or the use of any water, or any other easement, has been peaceably and openly enjoyed as an easement and as of right, without interruption for twenty years; or
- (c) any profit has been peaceably and openly enjoyed as of right, without interruption, for twenty years,

the right to such access and use of light or air, or to such way or watercourse or use of water or such other easement, or to such profit, shall be absolute and indefeasible.

(2) Each of the said periods of twenty years shall be a period, whether commencing before or after the commencement of this <sup>Act</sup> Ordinance, ending within the two years immediately preceding the institution of the action in which the claim to which the period relates is contested.

(3) Nothing in this section shall enable the acquisition of any easement, profit or other right over or in respect of—

- (a) Crown land or land otherwise enjoyed by the Crown, or land vested in a Region; or
- (b) land vested in the Organization or in the General Manager of the East African Railways and Harbours Administration; or
- (c) mines and minerals as defined in the Mining Ordinance; or
- (d) land vested in a county council (other than land vested in it by section 120 (8) of this Ordinance); or
- (e) land vested in the Trustees of the Royal National Parks of Kenya.

Cap. 306.

Time not to run while servient tenement held for limited interest or leased.

**140.** Where any land upon, over or from which any easement or profit has been enjoyed or derived has been held for or by virtue of any interest for life or any term of years exceeding three years, the time of the enjoyment of such easement or profit during the continuance of that interest or term shall be excluded in the computation of the period of twenty years, if the claim is, within three years next after the determination of such interest or term, resisted by the person entitled on such determination to the land.

141. (1) Where a person is in adverse possession, within the meaning of section 12 of the Limitation Ordinance, 1963, of registered land or land comprised in a registered lease, then, if the title of the proprietor of the land or lease has been extinguished by virtue of that Ordinance, the person in adverse possession may apply to the court for an order that he be registered as the proprietor of the land or lease, as the case may be.

Registration of title by adverse possession and of acquired easements and profits.  
— of 1963.

(2) An order made under subsection (1) of this section shall on registration take effect subject to any entry on the register which has not been extinguished under the Limitation Ordinance, 1963.

(3) A proprietor of land who has acquired a right to an easement or profit under section 139 of this Ordinance may apply to the court for an order vesting the easement or profit in him, and may register any order so obtained in the register of the land or lease affected by the easement of profit and in the register of the land or lease for whose benefit it has been acquired, and the easement or profit shall come into being upon such registration being made, but not before.

(4) The proprietor or the applicant or any other person interested may apply to the court for the determination of any question arising under this section.

#### PART X—RECTIFICATION AND INDEMNITY

142. (1) The Registrar may rectify the register or any instrument presented for registration in the following cases—

Rectification by Registrar.

- (a) in formal matters and in the case of errors or omissions not materially affecting the interests of any proprietor;
- (b) in any case and at any time with the consent of all persons interested;
- (c) where, upon resurvey, a dimension or area shown in the register is found to be incorrect, but in such case the Registrar shall first give notice to all persons appearing by the register to be interested or affected of his intention so to rectify.

(2) Upon proof of the change of the name or address of any proprietor, the Registrar shall, on the written application of the proprietor, make an entry in the register to record the change.

Rectification  
by court.

**143.** (1) Subject to subsection (2) of this section, the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.

Right to  
indemnity.

**144.** (1) Subject to the provisions of this <sup>Act</sup> Ordinance and of any written law relating to the limitation of actions, any person suffering damage by reason of—

(a) any rectification of the register under this <sup>Act</sup> Ordinance;  
or

(b) any mistake or omission in the register which cannot be rectified under this <sup>Act</sup> Ordinance, other than a mistake or omission in a first registration; or

(c) any error in a copy of or extract from the register or in a copy of or extract from any document or plan certified under this <sup>Act</sup> Ordinance,

shall be entitled to be indemnified by the Government out of moneys provided by the Legislature.

(2) No indemnity shall be payable under this <sup>Act</sup> Ordinance to any person who has himself caused or substantially contributed to the damage by his fraud or negligence, or who derives title (otherwise than under a registered disposition made bona fide for valuable consideration) from a person who so caused or substantially contributed to the damage.

Amount of  
indemnity.

**145.** Where an indemnity is awarded in respect of the loss of any interest in land, it shall not exceed—

(a) where the register is not rectified, the value of the interest at the time when the mistake or omission which caused the damage was made; or

(b) where the register is rectified, the value of the interest immediately before the time of rectification.

**146.** The Registrar may, on the application of any interested party, determine whether a right of indemnity has arisen under this Part and, if so, award indemnity, and may add thereto any costs and expenses properly incurred in relation to the matter.

Procedure for claiming indemnity.

**147.** Where any moneys are paid by way of indemnity under this Part, the Minister is entitled to recover by suit or otherwise the amount so paid from any person who has caused or substantially contributed to the loss by his fraud or negligence, and to enforce any express or implied agreement or other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which the indemnity has been paid.

Recovery of indemnity paid.

**148.** (1) As between the Government and a proprietor, no claim to indemnity shall arise and no suit shall be maintained on account of any surplus or deficiency in the area or measurement of any land disclosed by a survey showing an area or measurement differing from the area or measurement disclosed on any subsequent survey or from the area or measurement shown in the register or on the registry map.

Errors in survey.

(2) As between a proprietor and any person from or through whom he acquired the land, no claim to indemnity shall be maintainable on account of any surplus or deficiency in the area or measurement above or below that shown in any other survey or above or below the area or measurement shown in the register or on the registry map, after a period of six months from the date of registration of the instrument under which the proprietor acquired the land.

#### PART XI—DECISIONS OF REGISTRAR AND APPEALS

**149.** Whenever any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on him by this Ordinance, the Registrar may state a case for the opinion of the Supreme Court; and thereupon the Supreme Court shall give its opinion thereon, which shall be binding upon the Registrar.

Power of Registrar to state case.

**150.** (1) If any person is dissatisfied by the refusal of the Deputy Chief Land Registrar, a Land Registrar or an Assistant Land Registrar to effect or cancel any registration, he

Appeals

may, within thirty days of the refusal, appeal in the prescribed form to the Chief Land Registrar, and the Chief Land Registrar may direct that such registration be effected or cancelled, as the case may require, or may uphold the refusal.

(2) (a) The Minister or any person aggrieved by a decision, direction, order, determination or award of the Chief Land Registrar may, within thirty days of the decision, direction, order, determination or award, give notice to the Chief Land Registrar in the prescribed form of his intention to appeal to the ~~Supreme~~<sup>High</sup> Court against the decision, direction, order, determination or award.

(b) On receipt of a notice of appeal, the Chief Land Registrar shall prepare and send to the Court and to the appellant, and to any other person appearing to him from the register to be affected by the appeal, a brief statement of the question in issue.

(c) On the hearing of the appeal, the appellant and the Chief Land Registrar and any other person who, in the opinion of the Court, is affected by the appeal may, subject to any rules of court, appear and be heard in person or by an advocate.

(d) The Court may make such order on the appeal as the circumstances may require, and every such order shall be given effect to by the Chief Land Registrar.

(e) The costs of the appeal shall be in the discretion of Court.

**151.** (1) Any party to an appeal from the decision of any court (including an African court) or to any subsequent appeal may give notice of the appeal to the Registrar, who shall make a note thereof in the register.

(2) Where—

(a) a note has been so made in the register, all dispositions affecting the land, lease or charge concerned and registered after the note shall take effect subject to any order made on the appeal; and

(b) no note has been so made in the register, all dispositions other than dispositions made in good faith and for valuable consideration shall take effect subject to any order made on the appeal.

## PART XII—MISCELLANEOUS

**152.** Any person who under this <sup>Act</sup> Ordinance submits a caution or any instrument for registration, or is the proprietor of any land, lease or charge, shall furnish to the Registrar in writing a postal address within Kenya for service, and shall notify him in writing of any change in that address:

Addresses.

Provided that the Registrar may in his discretion dispense with this requirement in regard to any particular registration.

**153.** A notice under this <sup>Act</sup> Ordinance shall be deemed to have been served on or given to any person—

Service of notices.

- (a) if served on him personally;
- (b) if left for him at his last known place of residence or business in Kenya;
- (c) if sent by registered post to him at his last known postal address or at his last known postal address in Kenya;
- (d) if served in any of the above-mentioned ways on an attorney holding a power of attorney whereunder such attorney is authorized to accept such service;
- (e) if service cannot be effected in one of the above-mentioned ways, by displaying it in a prominent place on the land.

**154.** (1) Where by this <sup>Act</sup> Ordinance a thing is to be or may be done after giving a person an opportunity of being heard, that person shall be deemed to have been given such an opportunity—

Meaning of "opportunity of being heard".

- (a) if he attends before the Registrar personally or by an advocate or other agent, and is given such an opportunity; or
- (b) if he intimates, personally or by an advocate or other agent, that he does not wish to be heard; or
- (c) if he has been served with a notice in writing specifying the nature of the thing to be done and appointing a day and time not less than seven days after service of the notice at which he will, if he attends before the Registrar, be heard.

(2) Where a person or an advocate or other agent on his behalf attends before the Registrar concerning a matter on which he is entitled to an opportunity of being heard, or fails to attend pursuant to such a notice as aforesaid, the Registrar may, if he thinks fit, adjourn the hearing from time to time, and, notwithstanding failure to attend, may, if he thinks fit, hear such person at any time.

(3) Where by this <sup>Act</sup> Ordinance all persons interested or affected are to be given an opportunity of being heard, it shall be sufficient if all persons who, according to any subsisting entry in the register, appear to be so interested or affected are given such opportunity.

Offences.

**155.** (1) Any person who knowingly misleads or deceives any person authorized by or under this <sup>Act</sup> Ordinance to require information in respect of any land or interest in land shall be guilty of an offence and liable to imprisonment for a term not exceeding one year or to a fine not exceeding ten thousand shillings, or to both such imprisonment and such fine.

(2) Any person who—

(a) fraudulently issues or makes or fraudulently procures the issue or making of, any certificate or other document, or any registration, or any erasure or alteration in any certificate or other document or in any register; or

(b) fraudulently removes from a registry any register or any part of any register or any instrument filed in the registry; or

(c) fraudulently causes any defacement, obliteration, mutilation or unauthorized entry or alteration to be made on or in any register or filed instrument,

shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand shillings, or to both such imprisonment and such fine.

(3) If any person after the delivery to him of a summons to attend before the Registrar or to produce any document neglects or refuses without reasonable cause to attend in accordance with the summons, or to produce any document which he is required by the summons to produce, or to answer upon oath or otherwise any question which is lawfully put to

him by the Registrar under the powers conferred by this Ordinance, he shall be guilty of an offence and liable to a fine not exceeding five hundred shillings.

**156.** (1) The prescribed fees shall be payable in respect of land certificates, certificates of lease, searches, survey plans, printed forms and all other matters connected with registration, and the Registrar may refuse registration until the fees are paid. Fees.

(2) The Registrar may act notwithstanding that the prescribed fee or any part thereof has not been paid, but the unpaid fee or part of a fee shall be recorded in the register.

(3) The Registrar may refuse to register a disposition of any land, lease or charge against which unpaid fees are recorded until such fees are paid.

**157.** Unpaid fees or expenses incurred by the Registrar shall constitute a debt due to him and shall be a civil debt recoverable summarily. Recovery of fees and expenses.

**158.** An order for the payment of a sum of money made by the Registrar under any power conferred by this Ordinance shall be deemed to be a decree of the ~~Supreme~~ <sup>High</sup> Court and shall be enforceable as such. Enforcement of Registrar's orders for payment.

**159.** Except as provided by section 120 of this ~~Ordinance~~ <sup>Act</sup>, civil suits and proceedings relating to the title to, or the possession of, land, or to the title to a lease or charge, registered under this ~~Ordinance~~ <sup>Act</sup>, or to any interest in any such land, lease or charge, being an interest which is registered or registrable under this ~~Ordinance~~ <sup>Act</sup>, or being an interest which is expressed by this ~~Ordinance~~ <sup>Act</sup> not to require registration, shall, notwithstanding the provisions of the Courts ~~Ordinance~~ <sup>Act</sup>, be tried by the ~~Supreme~~ <sup>High</sup> Court, or, where the value of the subject matter in dispute does not exceed ten thousand shillings, by the ~~Supreme~~ <sup>High</sup> Court or a subordinate court held by a Senior Resident Magistrate or a Resident Magistrate: Jurisdiction of courts.

Cap. 10.

Provided that where the land in question is within the special areas the limit of jurisdiction of a subordinate court held by a Resident Magistrate shall not apply.

Rules.

**160.** The Minister may make rules generally to give effect to the purposes and provisions of this Ordinance, and in particular, and without prejudice to the generality of the foregoing, for prescribing the forms to be used under this Ordinance and the fees payable for anything to be done thereunder, and for prescribing anything which under this Ordinance may be prescribed.

Saving of rights of Crown and Trust Land Board.

**161.** Nothing in this Ordinance prejudices any of the interests, rights, powers and privileges conferred on the Crown or the Trust Land Board by any other written law.

Ordinance to bind Crown.

**162.** Subject to sections 139 (3) and 161 of this Ordinance, this Ordinance binds the Crown.

Application of common law.

**163.** Subject to the provisions of this Ordinance and save as may be provided by any written law for the time being in force, the common law of England, as modified by the doctrines of equity, shall extend and apply to Kenya in relation to land, leases and charges registered under this Ordinance and interests therein, but without prejudice to the rights, liabilities and remedies of the parties under any instrument subsisting immediately before such application.

Indian Transfer of Property Act not to apply to registered land. IV of 1882.

**164.** Upon the first registration of any land under this Ordinance, the Transfer of Property Act, 1882, of India shall cease to apply to that land, except in relation to any dealing entered into before the date of first registration.

Amendment of other Ordinances.

**165.** The Ordinances specified in the first column of the Schedule to this Ordinance are amended in the manner specified in relation to each such Ordinance in the second column of the said Schedule.

## SCHEDULE

(s. 165)

*Act*  
Ordinance

*Amendments*

The Trustee Ordinance  
(Cap. 167)

The definition of "mortgage" and "mortgagee" in section 2 is amended by deleting the words "or under the Registration of Titles Ordinance and a charge or lender under the Land Registration (Special Areas) Ordinance", and by substituting therefor the words "under the Registration of Titles Ordinance or the Registered Land Ordinance, 1963".

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## SCHEDULE—(Contd.)

*Act*  
Ordinance

*Amendments*

The Rating Ordinance  
(Cap. 266)

Section 38 is amended by deleting all the words following "such property", and by substituting therefor the words "and, where the title to the rateable property is registered under any law relating to the registration of title to land, the local authority may deliver a notification of such charge, in the prescribed form, to the registrar, who shall register it against the title to the rateable property; and the charge shall take priority in accordance with such law."

The Land Registration  
(Special Areas)  
Ordinance  
(Cap. 283)

Section 1 is amended by deleting "Land Registration (Special Areas)", and by substituting therefor the words "Land Adjudication".

Section 4 is amended by deleting the definitions of "adverse possession", "Assistant Registrar", "borrower", "certificate of title", "dealing", "lease", "lender", "lessee", and "lessor", "proprietor", "the Register", "Registrar", "registration district" and "registration section", "the Registry", "Registry Map", "transfer" and "transmission".

Sections 31 to 103 inclusive are repealed.

The following new sections are inserted, immediately after section 30—

Regulations. 31. The Minister may make regulations for the purpose of carrying into effect the provisions and purposes of this Ordinance.

Fees. 32. All fees, costs, charges and expenses to be paid under or by virtue of this Ordinance shall be a civil debt recoverable summarily by the Chief Land Registrar appointed under the Registered Land Ordinance, 1963.

The Registration of  
Documents  
Ordinance  
(Cap. 285)

Paragraph (g) of the proviso to section 4 is amended by deleting the words "Land Registration (Special Areas) Ordinance", and by substituting therefor the words "Registered Land Ordinance, 1963"

## SCHEDULE—(Contd.)

<sup>Act</sup> Ordinance	Amendments
The Mining Ordinance <sup>Act</sup> (Cap. 306)	The definition of "reserved area" in section 2 (1) is amended by inserting the word "the" between "within" and "special", and by deleting the words "Land Registration (Special Areas) Ordinance <sup>Act</sup> " and by substituting therefor the words "Registered Land Ordinance, 1963."
The Oil Production Ordinance <sup>Act</sup> (Cap. 308)	Section 7 (1) (i) is amended by deleting the words "Land Registration (Special Areas) Ordinance <sup>Act</sup> ", and by substituting therefor the words "Registered Land Ordinance, 1963."
The Agriculture Ordinance <sup>Act</sup> (Cap. 318)	Section 6 is amended by deleting the words "Land Registration (Special Areas) Ordinance <sup>Act</sup> ", and by substituting therefor the words "Registered Land Ordinance, 1963".
	Section 2 (1) is amended by deleting the definition of "Registrar of Titles" and "Register of Titles", and by substituting therefor two new definitions as follows—  "Register of Titles", in connexion with land, means a register, kept under some Ordinance <sup>Act</sup> relating to the registration of title to land, wherein the title to the land is for the time being registered;  "Registrar of Titles" means the officer responsible for making entries in a Register of Titles;.
	Section 2 (4) (a) (iii) is amended by deleting the expression "the Land Registration (Special Areas) Ordinance <sup>Act</sup> ", and by substituting therefor the expression " , being in the special areas, under the Registered Land Ordinance, 1963".
	Sections 54 (5) and 74 (e) are amended by deleting the words "survey or land reference", and by substituting therefor the words "survey, land reference or title", and by inserting after the word "memorandum" the words "or note".
	Sections 54 (6) and 74 (2) (f) are each amended by adding at the end thereof the words "and the Registered Land Ordinance, 1963,".

## SCHEDULE—(Contd.)

<i>Act</i> Ordinance	Amendments
The Forests <i>Act</i> Ordinance (Cap. 385)	Section 4 (1) (a) is amended by deleting the words "Land Registration (Special Areas) <i>Act</i> Ordinance", and by substituting therefor the words "Registered Land <i>Act</i> Ordinance, 1963".
The Public Roads and Roads of Access <i>Act</i> Ordinance (Cap. 399)	Section 2 is amended by deleting the definition of "Registrar of Titles". and by substituting therefor a new definition as follows—  "the Registrar of Titles" means <i>Act</i> the appropriate registrar under any <i>Act</i> Ordinance relating to the registration of title to land.
The Companies <i>Act</i> Ordinance (Cap. 486)	Section 96 (2) is amended—  (a) by adding at the end of paragraph (a) thereof the words "other than a charge registered under the Registered Land <i>Act</i> Ordinance, 1963, relating solely to immovable property";  (b) by adding at the end of paragraph (d) thereof the words "other than a charge registered under the Registered Land <i>Act</i> Ordinance, 1963".
The Town Planning <i>Act</i> Ordinance (Cap. 134) (1948)	Section 5 (6) is amended by deleting the words "Native Lands Registration <i>Act</i> Ordinance, 1959", and by substituting therefor the words "Registered Land <i>Act</i> Ordinance, 1963".
The African Courts <i>Act</i> Ordinance, 1951 (No. 65 of 1951)	Section 12 (2) (c) is amended—  (a) by inserting, immediately after "1959", the words "or the Land Adjudication <i>Act</i> Ordinance";  (b) by deleting the words "of the said <i>Act</i> Ordinance", and by substituting therefor the words "of either of the said <i>Act</i> Ordinances";  (c) by deleting the words "and <i>Act</i> Ordinance", and by substituting therefor the words "or <i>Act</i> Ordinance".
	Section 12 (3) is amended by deleting the expression "section 79 <i>Act</i> of the Native Lands Registration <i>Act</i> Ordinance, 1959", and by substituting therefor the expression "section <i>Act</i> 120 of the Registered Land <i>Act</i> Ordinance, 1963".