

LEGAL NOTICE NO. 457

(LND. 1/13/1)

THE KENYA ORDER IN COUNCIL 1963

(L.N. 245 of 1963)

IN EXERCISE of the powers conferred by section 11 (1) of the Kenya Order in Council 1963, the Governor hereby makes the following Regulations:—

THE KENYA (LAND CONTROL) (TRANSITIONAL PROVISIONS) REGULATIONS, 1963

1. These Regulations may be cited as the Kenya (Land Control) (Transitional Provisions) Regulations, 1963, and shall come into operation on the 23rd July 1963. Citation and commencement.
2. (1) Expressions used in these Regulations have the same respective meanings as they have in Part 3 of Chapter XI of the Constitution. Interpretation.
- (2) Subject to paragraph (1) of this regulation, the Interpretation and General Provisions Ordinance shall apply for the interpretation of these Regulations as it applies for the interpretation of an Ordinance. Cap. 2.
3. Until provision is made by a law made by the Central Legislature for the purposes of section 205 (1) (b) of the Constitution, all Trust land in the Nairobi Area shall be deemed to be agricultural land for the purposes of Part 3 of Chapter XI of the Constitution. Declaration as to agricultural land in Nairobi Area.
4. (1) Until provision is made by a law made by the Regional Assembly under section 211 (1) (a) of the Constitution, the manner in which a county council shall divide the area within its jurisdiction into divisions under section 206 of the Constitution shall be by resolution of the council published in the Regional Gazette. Establishment of Divisions.
- (2) At any time before a county council divides the area within its jurisdiction into divisions under section 206 of the Constitution, the Governor may, by notice in the Gazette, divide that area into divisions, and those divisions shall be deemed to be divisions established under that section until the county council itself divides the area into divisions under that section.
5. (1) At any time before a Divisional Board is established for a division under section 207 of the Constitution, the Governor may, by notice in the Gazette, establish a Divisional Board for that division in the manner provided by paragraph (2) of this regulation, and that Divisional Board shall be deemed to be a Divisional Board established under that section until a Divisional Board is established under that section. Establishment of Divisional Boards.
- (2) A Divisional Board established by the Governor under paragraph (1) of this regulation shall consist of such number of persons as the Governor may think fit, appointed by notice in the Gazette.

Land within more than one division.

6. Until provision is made by a law made by the Regional Assembly under section 211 (1) (b) of the Constitution, where land which is the subject of a land transaction is situated within the area of jurisdiction of one county council but of more than one Divisional Board, there need be obtained only the consent of the Divisional Board within whose area of jurisdiction the greater part of the land is situated.

Exemption of land transactions.

7. Until provision is made by a law made by the Regional Assembly under section 211 (2) (a) of the Constitution, the Minister may exempt from the provisions of Part 3 of Chapter XI of the Constitution any class of land transaction relating to land situated within any particular division.

Prohibition of land transactions.

8. Until provision is made by a law made by the Regional Assembly under section 211 (2) (b) of the Constitution, the Minister may prohibit the giving of consent to—

- (a) any particular land transaction or class of land transactions; or
- (b) all land transactions which would result in the creation of a separate parcel of land that would have a smaller area of a smaller frontage than a particular area of frontage specified by him.

Procedure of Divisional Boards.

9. (1) Until provision is made by a law made by the Regional Assembly, procedure of Divisional Boards shall be governed by this regulation.

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

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

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

Mode of application for consent.

10. (1) Until provision is made by a law made by the Regional Assembly, applications for consent to a land transaction, except where the land is situated in the areas referred to in section 188 (5) of the Constitution, shall be made in the manner prescribed by this regulation.

(2) The application shall be in form 1 in the Schedule to these Regulations, and may be printed on the reverse of, or otherwise incorporated in, any of the forms in the Third Schedule to the Land Registration (Special Areas) Regulations.

(3) The applicant shall furnish to the Divisional Board such additional information as the Board may from time to time require.

11. (1) Until provision is made by a law made by the Regional Assembly, applications for consent to a land transaction where the land is situated in the areas referred to in section 188 (5) of the Constitution, shall be made in the manner prescribed by this regulation.

Mode of application for consent in certain areas.

(2) The application shall be in form 2 in the Schedule to these Regulations.

(3) If the application involves the subdivision of land it shall be accompanied by—

(a) five copies of suitable plans on durable material, showing the proposed subdivision, the means of access thereto and, very approximately, any existing permanent development; and

(b) a statement in writing as to the water supply available for the subdivision and the use to which the land is proposed to be put.

(4) Every applicant shall furnish to the Divisional Board such additional information as the Board may from time to time require.

(5) An application made under the provisions of this regulation shall be deemed to be an application for consent under section 39 (a) of the Crown Lands Ordinance (if such is required).

Cap. 280.

12. (1) Until provision is made by a law made by a Regional Assembly this regulation shall apply in relation to the matters therein provided for.

Decisions of Divisional Boards and attendance before Boards.

(2) A decision of a Divisional Board—

(a) in the case of an application under regulation 10 of these Regulations shall be given in writing, and if consent to the transaction is refused the Board shall give its reasons in writing, and a separate memorandum (in triplicate) containing the reasons and signed by the chairman shall be attached to the application, and a further copy of the memorandum shall be made available to the applicant if he so requests;

(b) in the case of an application under regulation 11 of these Regulations, shall be given to the applicant in duplicate in form 3 in the Schedule to these Regulations; the original consent shall be marked "Registration Copy" and shall accompany the document evidencing the transaction to which the consent relates when the same is presented for registration.

(3) Where a person has made due application, under regulation 10 or regulation 11 of these Regulations, to a Divisional Board for its consent to a land transaction and the Board has not made a decision thereon within three months after the date of such application the application shall be deemed to have been refused.

(4) The Appeals Tribunal, or a Divisional Board or county council whose consent is sought under these Regulations (whether in the first instance or on appeal), may require the attendance before it of the applicant or of any party to or persons interested in or affected by the application and may require the applicant to adduce evidence to its satisfaction as to the applicant's identity and as to the ownership of the land to which the application relates and may require any person to produce any document or other evidence relating to the land.

(5) The Appeals Tribunal, or Divisional Board or county council may depute one or more of its members to visit and report on the land to which the application relates.

(6) Where any person whose presence is required under paragraph (4) of this regulation does not appear or any person who is required under that paragraph to produce any document or other evidence does not produce that document or evidence, the authority may allow such reasonable time as it may think fit for the appearance before it of such person or for the production of such documents.

(7) Any person who without reasonable excuse refuses or neglects to attend before such authority, or to produce any document or evidence, having been required to do so under paragraph (4) of this regulation within the time allowed, shall be guilty of an offence and liable to a fine not exceeding five hundred shillings.

13. Any member of the Appeals Tribunal, a Divisional Board or a county council whose consent is sought under these Regulations (whether in the first instance or on appeal) and any person authorized in writing by such a Board or council may, at all reasonable times after giving reasonable notice and on production of his authority to any person reasonably requiring the same, enter upon and inspect any land for the purpose of carrying out the functions of such Board or council under these Regulations.

14. (1) The registrar shall refuse to register an instrument effectuating a land transaction unless he is satisfied that any consent required by these Regulations to be given in respect of the transaction has been given, or that no consent is required thereto by these Regulations.

(2) In paragraph (1) of this regulation the word "registrar" has the respective meanings assigned to it in section 2 of the Crown Lands Ordinance, section 2 of the Registration of Titles Ordinance or section 4 of the Land Registration (Special Areas) Ordinance or, in relation to land to which Part II of the Land Titles Ordinance applies, means the Principal Registrar and any registrar appointed for the purposes of that Part.

(3) Where an estate, interest or right in or over any agricultural land is vested in a private company registered under the Companies Ordinance, no person shall register in the books of that company any instrument effectuating the sale, transfer, charge or any other disposal of or dealing with any share, debenture or stock in that company unless any consent required by these Regulations has been given thereto or no consent is required thereto by these Regulations.

Power to
inspect land.

Registration
of documents.

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

(4) Any person who contravenes the provisions of paragraph (3) of this regulation shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months or to both such fine and such imprisonment.

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

Penalty for false statement.

16. Any expenses properly incurred under these Regulations shall be defrayed out of moneys provided by the appropriate Regional Assembly.

Expenses.

17. (1) The Land Control Regulations, 1961, excepting regulation 6 thereof are revoked:

Revocation of L.N. 142/61 and L.N. 147/61.

Provided that the Central Authority established by the said regulation 6 shall, notwithstanding such revocation, have all the powers conferred by the revoked Regulations which are necessary or expedient for the exercise of its powers under the Development and Use of Land (Planning) Regulations, 1961.

L.N. 516/61.

(2) Regulation 6 (1) (g) of the Land Control Regulations, 1961 is amended by substituting for the words "Land Development and Settlement Board" which appear therein the words "Central Land Board."

(3) The Land Control (Special Areas) Regulations, 1961 are revoked.

18. (1) Any application for consent duly made under regulation 10 of the Land Control Regulations 1961 or regulation 8 of the Land Control (Special Areas) Regulations, 1961 which at the commencement of these Regulations has not been finally determined under those Regulations, shall be deemed to be an application duly made under these Regulations and shall be forwarded by the person in whose possession it is to the Authority responsible under these Regulations for determining it and shall thereafter be determined in accordance with these Regulations.

Saving of application under L.N. 142/61 and L.N. 147/61.

(2) Any application for consent which has been transferred to a Provincial Board for determination in accordance with regulation 11 (2) (d) of the Land Control (Special Areas) Regulations, 1961, and which at the commencement of these Regulations has not been finally determined under the former Regulations, shall be deemed to be an appeal duly made under section 210 (1) of the Constitution and shall be forwarded by the person in whose possession it is to the county council responsible under Part 3 of Chapter XI of the Constitution for determining it and shall thereafter be determined in accordance with that Part.

Amendment of
L.N. 516/61.

19. The Development and Use of Land (Planning) Regulations, 1961, are amended—

(a) in regulation 3 thereof—

(i) by deleting the definitions of “Board of Appeal”, “Divisional Board” and “Regional Board” which appear therein;

(ii) by inserting therein, in their respective alphabetical positions the following new definitions—

“Appeals Tribunal” means the Appeals Tribunal established by section 210 of the Constitution;

“Divisional Board” means a Divisional Land Control Board established or deemed to be established under section 207 of the Constitution;

(b) in regulation 22 thereof, by substituting for the words “Regional Board for the region concerned, which may in its discretion refuse consent to the application”, which appear therein, the words “Appeals Tribunal, which may in its discretion refuse consent to the application (in which case the decision shall be final and shall not be questioned in any court)”.

Amendment of
Caps. 203, 377
and 489.

20. (1) Section 2 of the Cantonments Ordinance is amended by substituting for paragraph (ii) of the proviso thereto a new paragraph as follows—

(ii) a division established or deemed to have been established under section 206 of the Constitution shall be declared a cantonment without prior consultation with the Divisional Land Control Board for that Division.

(2) Sections 3 and 9 (1) of the Royal National Parks of Kenya Ordinance are amended by substituting for the provisos thereto the following provisos respectively—

Provided that, in the case of land situate within a division established or deemed to have been established under section 206 of the Constitution, the Governor shall first consult the Divisional Land Control Board for that division, and in the case of trust land shall first consult the local authority in which the land is vested.

Provided that, where the Governor is the competent authority, in the case of land situate within a division established or deemed to have been established under section 206 of the Constitution the Governor shall first consult the Divisional Land Control Board for that division, and in the case of trust land shall first consult the local authority in which the land is vested.

(3) Section 23 (1) of the Building Societies Ordinance is amended by substituting for the words “the Land Control Regulations, 1961, and the Land Control (Special Areas) Regulations, 1961”, which appear therein the words “and section 208 of the Constitution”.

SCHEDULE

FORM 1

THE LAND CONTROL (TRANSITIONAL PROVISIONS)
REGULATIONS, 1963

*Application for Consent to a Transaction in Land not Situated in an
Area to which Section 188 of the Constitution of Kenya Applies*

To: The Divisional Land Control Board,
..... County Council.

We
hereby apply for consent to the transaction specified overleaf (or of
which the full details are set out below):

.....
.....
.....

.....
(Owner(s) of the Land.)

Date

To: The Assistant Land Registrar
Transaction approved/refused.

.....
*Chairman,
Divisional Board.*

Place

Date

*(Note.—If the transaction is refused, the Board must give its
reasons in writing and a separate memorandum (in triplicate) contain-
ing these reasons and signed by the Chairman should be attached to
this form.)*

SCHEDULE—(Contd.)

FORM 2

To be submitted in TRIPLICATE in respect of each portion of land situated in an area to which section 188 of the Constitution of Kenya applies, through the Commissioner of Lands, P.O. Box 30089, Nairobi.

THE LAND CONTROL (TRANSITIONAL PROVISIONS)
REGULATIONS, 1963

Application for Consent of Divisional Board

.....

.....

Date

Application is hereby made for the Consent of the
..... Divisional Board to the transaction
described below:—

1. (a) Present registered holder of interest (full name in BLOCK letters)
- (b) Nationality
- (c) Address
2. (a) Proposed purchase, transferee, mortgagee, allottee, etc. (full name in BLOCK letters) (if a limited liability Company state names of Directors authorized and issued share capital and principal shareholders)
-
-
- (b) Nationality
- (c) Address
3. Nature of transaction (e.g. sale, gift, lease, mortgage, etc.) (If sale or allotment of shares—name of Company, number and particulars of shares to be transferred)
-
4. Term (i.e. the length of time for which the land affected is to be transferred or leased). (If sale or allotment of shares—Authorized Share Capital of the Company and numbers of shares issued at date of application)
-
5. Description of land—
 - L.R. No.
 - Acreage
 - Locality
 - County Council

SCHEDULE—(Contd.)

6. (a) Purchase price, if a sale or option) .. Sh.
 and/or rent Sh.
 or estimated value of the land if a gift Sh.
 or amount of loan Sh.
 and rate of interest (if a mortgage) %
 and any other information affecting the amount of the
 consideration, particularly regarding the description and
 area of crops with estimated yields and value thereof
included in the purchase price

 (b) Full description and approximate value of improvements
 on land included in the consideration

 (c) What other consideration (if any) is passing between the
 parties?

7. If a transfer of the land—
 Proposed development programme of purchaser, including
 funds available therefor—with approximate dates

 Does the purchaser/lessee intend to reside on the land?

8. (a) Other agricultural land registered in the name of or held
 under contract for sale by the proposed purchaser, trans-
 feree, lessee or allottee, or any members of his immediate
 family, or any company in which he has an interest (the
 nature of any interest in such company should be stated).
 L.R. Nos. Acreage
 Owner
 Nature of interest
 If contiguous to land being purchased
- (b) Particulars of agricultural land held and disposed of by
 purchaser or lessee in the last three years—
 L.R. Nos. District Acres
 L.R. Nos. District Acres
9. Farming experience of transferee

We hereby declare that the above information is true to the best of our knowledge and belief.

.....
*Signature of owner, lessor,
 mortgagor, etc.*

.....
*Signature of purchaser, lessee,
 mortgagee, etc.*

If spaces allowed under any particular item are insufficient for the information, a separate sheet with item numbers and duly signed by all parties should be attached.

SCHEDULE—(Contd.)

FORM 3

LETTER OF CONSENT

..... Divisional Board

.....

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To:

.....

Date

Reg No.

L.C.R. No.

Sir/Madam,

1. With reference to your

.....
the consent of the above-mentioned Board was accorded to the follow-
ing transaction on at the
meeting of the Board.

2. Nature of Transaction—

(a) L.R. No.

(b) Locality

(c) Sale, lease or mortgage, etc.

(d) Names of parties—

(i) From

(ii) To

(e) Length of term

(f) Consideration

I am Sir/Madam,
Your obedient servant,

.....

Chairman,

..... *Divisional Board.*

Copy to: The Commissioner of Lands, Nairobi.

Made this 17th day of July 1963.

E. N. GRIFFITH-JONES,
Acting Governor.