

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 3 (National Assembly Bills No. 1)*



REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2019**

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**NAIROBI, 28th January, 2019**

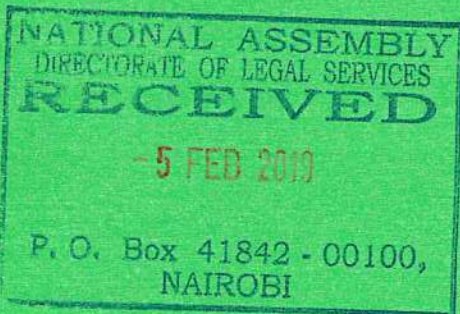
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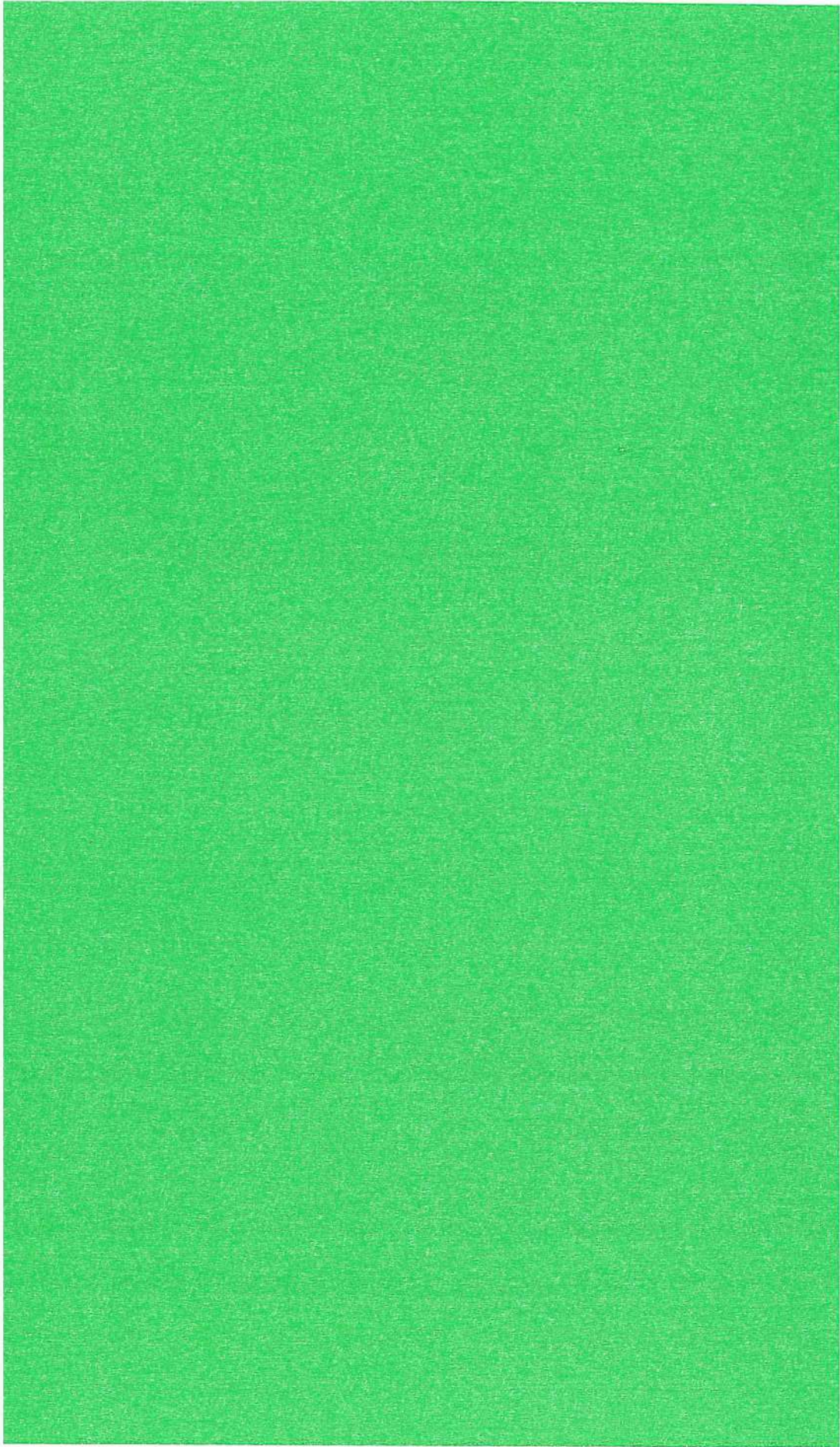
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**THE LAW OF CONTRACT (AMENDMENT) BILL,  
2019**

**A Bill for**

**AN ACT of Parliament to amend the Law of Contract  
Act**

**ENACTED** by the Parliament of Kenya, as follows—

**1.** This Act may be cited as the Law of Contract (Amendment) Act, 2019. Short title.

**2.** The Law of Contract Act is amended in section 3 by inserting the following new subsection immediately after subsection (1) – Amendment of section 3 of Cap. 23.

“(1A) Notwithstanding subsection (1), before a suit is brought against a defendant under subsection (1), the plaintiff shall first realise the security of the principal.

## **MEMORANDUM OF OBJECTS AND REASONS**

The principal object of this Bill is to amend the Law of Contract Act, Cap. 23. It proposes to amend the law so that in case of a default by the principal borrower, the creditor should first realise the assets of the principal borrower before proceeding to realise the assets of the guarantor.

**Clause 1** of the Bill provides for the short title.

**Clause 2** of the Bill provides for the amendment to section 3 of the Act to provide that before a creditor pursues a guarantor in law, he or she should first realise the assets of the principal debtor.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not delegate legislative powers to the Cabinet Secretary. It does not limit fundamental rights and freedoms.

### **Statement that the Bill concerns county governments**

The Bill does not affect the functions of the county governments and is therefore not a Bill concerning counties for purposes of the Standing Orders.

### **Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 24th January, 2019.

WAITITU FRANCIS MUNYUA,  
*Member of Parliament.*

*Section 3 of the Law of Contract Act which it is proposed to amend-*

**Certain contracts to be in writing**

(1) No suit shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriages of another person unless the agreement upon which such suit is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized.

(2) No suit shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain credit, money or goods, unless such representation or assurance is made in writing, signed by the party to be charged therewith.

(3) No suit shall be brought upon a contract for the disposition of an interest in land unless—

(a) the contract upon which the suit is founded—

(i) is in writing;

(ii) is signed by all the parties thereto; and

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.

(4) Subsection (3) shall not apply to a contract made in the course of a public auction nor shall anything in that subsection affect the creation or operation of a resulting, implied or a constructive trust.

(5) The terms of a contract may be incorporated in a document either by being set out in it or by reference to some other document.

(6) For the purposes of subsection (3)—

“disposition” includes a transfer and a devise, bequest or appointment of property contained in a will;

“interest in land” means any estate in or charge over land, or any estate in or charge over the proceeds of sale of land;

“party” includes any agent, auctioneer or advocate duly authorized in writing to act in the absence of the party who has given such authority;

“sign”, in relation to a contract, includes making one’s mark or writing one’s name or initial on the instrument as an indication that one intends to bind himself to the contents of the instrument and in relation to a body corporate includes—

- (a) signature by an attorney of the body corporate duly appointed by a power of attorney registered under the Registration of Documents Act (Cap. 285);
- (b) the affixing of the common seal of the body corporate in accordance with the constitution or the articles of association of the body corporate, as the case may be, in which case no further attestation shall be required;

“transfer” includes a mortgage, charge, lease, conveyance, assignment, assent, vesting declaration, vesting instrument disclaimer, release and every other assurance of property or any interest therein by any instrument other than a will or a codicil.

(7) The provisions of subsection (3) shall not apply to any agreement or contract made or entered into before the commencement of that subsection.