

SPECIAL ISSUE

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REPUBLIC OF KENYA

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NATIONAL ASSEMBLY BILLS, 2019

NAIROBI, 4th July, 2019

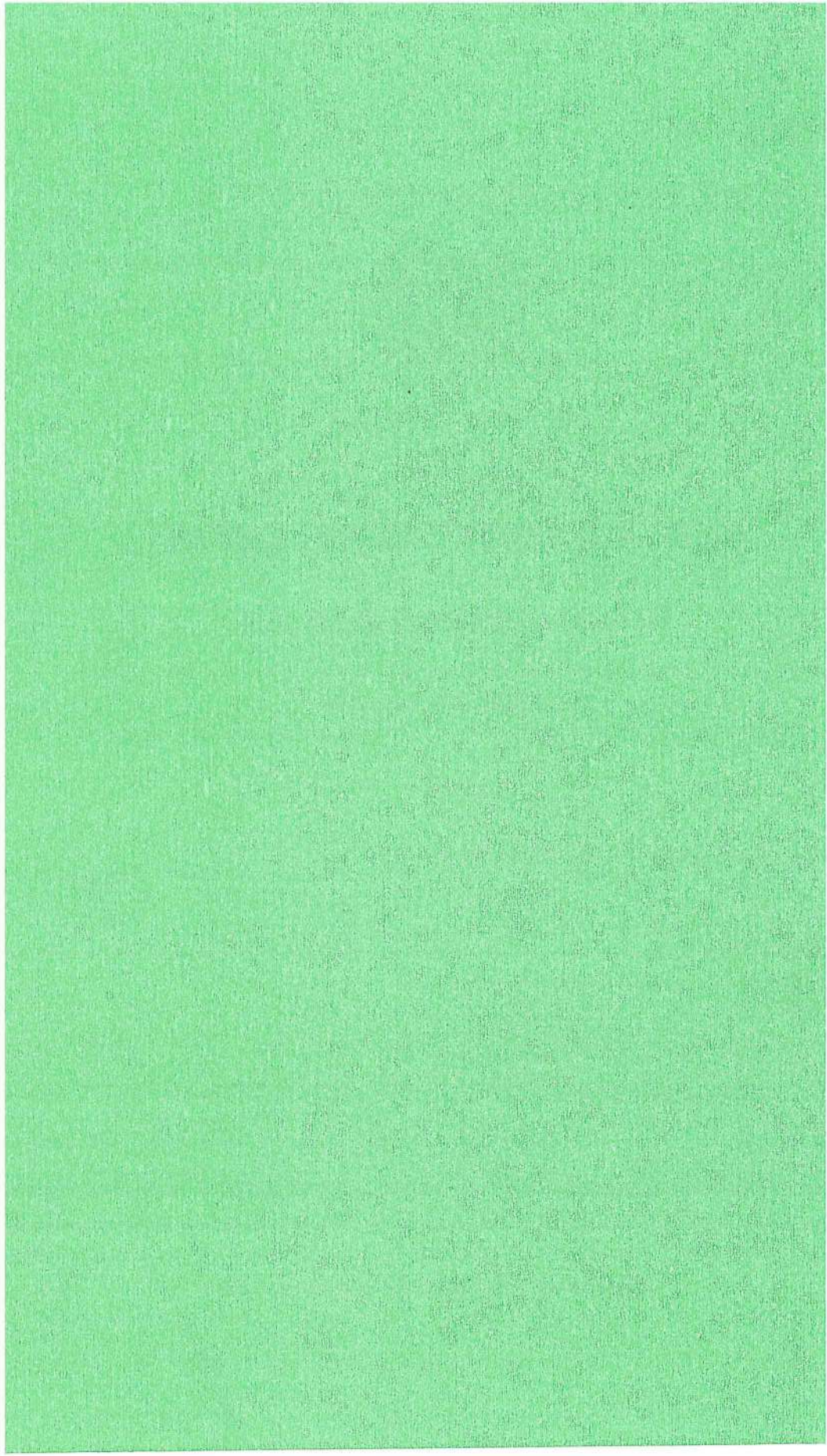
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THE LAND (AMENDMENT) BILL, 2019

A Bill for

AN ACT of Parliament to amend the Land Act.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Land (Amendment) Act, 2019.

Short title.

2. The Lands Act, 2012 hereinafter referred to as the “principal Act” is amended in section 2 by inserting the following new definition in its proper alphabetical sequence—

Amendment of section 2 of No. 6 of 2012.

“Registrar” has the meaning assigned to it under section 2 of the Land Registration Act.

No. 3 of 2012.

3. Section 12 of the principal Act is amended by inserting the following new sub-sections immediately after sub-section (12) —

Amendment of section 12 of No. 6 of 2012.

(13) The Registrar shall register public land allocated to a public body or institution by the Commission.

(14) Pursuant to section 31 of the Physical Planning Act, the Registrar shall register land set aside by persons or a land buying company for a public purpose consequent upon proposed development.

No. 6 of 1996.

(15) Upon registration of land under sub-sections (13) and (14), the Registrar shall issue a certificate of title in the name of a public body, institution or relevant ministry as the Registrar may determine.

(16) For avoidance of doubt, where land set aside is part of land to be sub-divided among the shareholders of a land buying company or persons who jointly own the land, the Registrar shall not approve the sub-division of the land until the certificates of titles referred to under sub-section (15) have been issued.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons

The principal object of the Bill is to amend the Land Act No. 6 of 2012 in order to provide that where public land has been allocated to a public body or public institution by the National Land Commission for a public purpose or where land set aside by persons or land buying companies for a public purpose, the Registrar of Lands under the Land Registration Act, 2012 shall issue a certificate of title in the name of the public body, public institution or the relevant ministry as the case may be. As it is presently, public land and land set aside for a public purpose by land buying companies continue to be grabbed by private persons primarily because there exist no certificates of title issued in respect to such land. This Bill therefore seeks to provide for registration of public land.

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

The Bill does not delegate legislative powers neither does it limit fundamental rights and freedoms.

Statement that the Bill does not concern County Governments

The Bill seeks to amend the Land Act so as to provide for registration of public land and land set aside for a public purpose. In view of this, the Bill does not concern County Governments in terms of Article 110(1)(a) of the Constitution as it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

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 27th June, 2019.

SIMON KING'ARA,
Member of Parliament.

Section 12 of No. 6 of 2012 which the Bill proposes to amend-

Allocation of public land

12. (1) Whenever the national or county government is satisfied that it may be necessary to allocate the whole or part of a specific public land, the Cabinet Secretary or the County Executive Committee member responsible for matters relating to land shall submit a request to the Commission for the necessary action by way of—

- (a) public auction to the highest bidder at prevailing market value subject to and not less than the reserved price;
- (b) application confined to a targeted group of persons or groups in order to ameliorate their disadvantaged position;
- (c) public notice of tenders as it may prescribe;
- (d) public drawing of lots as may be prescribed;
- (e) public request for proposals as may be prescribed; or
- (f) public exchanges of equal value as may be prescribed.

(2) The Commission shall ensure that any public land that has been identified for allocation does not fall within any of the following categories—

- (a) public land that is subject to erosion, floods, earth slips or water logging;
- (b) public land that falls within forest and wild life reserves, mangroves, and wetlands or fall within the buffer zones of such reserves or within environmentally sensitive areas;
- (c) public land that is along watersheds, river and stream catchments, public water reservoirs, lakes, beaches, fish landing areas riparian and the territorial sea as may be prescribed;
- (d) public land that has been reserved for security, education, research and other strategic public uses as may be prescribed; and
- (e) natural, cultural, and historical features of exceptional national value falling within public lands;
- (f) reserved land; or
- (g) any other land categorized as such, by the Commission, by an order published in the *Gazette*.

(3) Subject to Article 65 of the Constitution, the Commission shall upon the request of the national or a county government set aside land for investment purposes.

(4) In fulfilling the requirements of subsection (3), the Commission shall ensure that the investments in the land benefit local communities and their economies.

(5) Subject to the Constitution and any other law, the Commission may, in consultation with the National and county governments, allocate land to foreign governments on a reciprocal basis in accordance with the Vienna Convention on Diplomatic Relations.

(6) At the expiry, termination or extinction of a lease granted to a non-citizen, reversion of interests or rights in and over the land shall vest in the national or county government as the case may be.

(7) Public land shall not be allocated unless it has been planned, surveyed and serviced and guidelines for its development prepared in accordance with section (17) of this Act.

(8) Public land allocated under this section shall not be sold, disposed off, subleased, or subdivided unless it is developed for the purpose for which it was allocated.

(9) Where the land allocated under subsection (8) is not developed in accordance with the terms and conditions stipulated in the lease, that land shall automatically revert back to the national or county government, as the case may be and the Commission shall include in its annual report the status of implementation of this subsection.

(10) In an allocation of public land under this section, the Commission may impose any terms, covenants, stipulations and reservations that the Commission considers advisable, including—

- (a) that the applicant shall personally occupy and reside on the land for a period set by the Commission;
- (b) the applicant shall do such work and spend such money for permanent improvement of the public land within the period specified by the Commission; or
- (c) the consideration that must be paid for a disposition of public land.

(11) The Commission shall make regulations prescribing the criteria for allocation and for connected matters.

(12) The Commission shall make regulations prescribing the criteria for allocation of public land and without prejudice to the generality of the foregoing, such regulations may prescribe—

- (a) forms of ownership and access to land under all tenure systems;
- (b) the procedure and manner of setting aside land for investments;
- (c) procedures to be followed with respect to auction and disposition of land;
- (d) appropriate mechanisms for repossession of land given to citizens at the expiry of a lease; and
- (e) mechanisms of benefit sharing with local communities whose land have been set aside for investment.

