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CAP. 300

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Land Registration Act

Cap. 300

Legislation as at 31 December 2022

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LAND REGISTRATION ACT
CAP. 300

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AN ACT of Parliament to revise, consolidate and rationalize the registration of titles to land, to give effect to the principles and objects of devolved government in land registration, and for connected purposes

Part I – PRELIMINARY

1. Short title

This Act may be cited as the Land Registration Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"adjudication officer" has the meaning assigned to it in the Land Adjudication Act (Cap. 284);

"adjudication register" has the meaning assigned to it in the Land Adjudication Act;

"advanced electronic signature" means an electronic signature which is—

(a) uniquely linked to the signatory;

(b) capable of identifying the signatory;

(c) created using means that the signatory may maintain under his or her sole control; and

(d) linked to the data to which it relates in such a manner that any subsequent change to the data may be detectable;

"allocation of land" means the legal process of granting the right to public land;

"assignee" has the meaning assigned to it under the Land Act (Cap. 280);

"borrower" means a person who obtains an advance of money or money's worth or agrees to fulfill a condition on the security of a charge of that person's interest in land or lease;

"building" means a structure or erection of any kind, whether permanent or temporary, movable or immovable and whether completed or not;

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to land;

"cadastral map" means a map or series of maps referred to under section 15;

"cadastral plan" means a geo-referenced plan approved by the statutory body responsible for survey of land;

"caution" includes—

(a) a notice in the form of a register to the effect that no action of a specified nature in relation to the land in respect of which the notice has been entered may be taken without first informing the person who gave the notice; or

(b) a caveat.

"certificate" means a certificate of lease or a certificate of title;

"certificate of lease" means a certificate of lease in the prescribed form issued under section 30;

"certificate of title" means a certificate of title in the prescribed form issued under section 30;

"charge" has the meaning assigned to it under the Land Act (Cap. 280);

"Commission" means the National Land Commission established by Article 67 of the Constitution;

"community" means a clearly defined group of users of land identified on the basis of ethnicity, culture or similar community of interest as provided under Article 63(1) of the Constitution, which holds a set of clearly defined rights and obligations over land and land-based resources;

"community land register" means a register compiled in accordance with section 8 of the Act and the law relating to community land;

"condominium" means housing consisting of a complex of dwelling units in which each unit is individually owned;

"copy of a document" in respect to a prescribed document or other document required by law means a copy of that document certified as a true copy of the original by an authorized person;

"corporate body" means a body incorporated under any written law and includes a company, association or body of persons;

"co-tenancy" has the meaning ascribed to it by section 91;

"Court" means the Environment and Land Court established by the Environment and Land Court Act (Cap. 8D), and other courts having jurisdiction on matters relating to land;

"dealing" includes disposition and transmission;

"deliver" includes to transmit by post, hand, email, fax or other prescribed medium;

"disposition" has the meaning assigned to it under the Land Act (Cap. 280);

"dwelling house" means a house, part of a house or room used as a separate dwelling in any building and includes a garden or other premises within the cartilage of and used as a part of any such dwelling house;

"easement" has the same meaning assigned in the Land Act (Cap. 280);

"effective date" means the commencement date of this Act;

"electronic signature" means data in electronic form affixed to or logically associated with other electronic data which may be used to identify the signatory in relation to the data message and indicate the signatory's approval of the information contained in the data message;

"encumbrance" means any charge, lease, or other interest noted or required to be noted in the encumbrance Section of the Land Register;

"eviction" means the act of depriving or removing a person from the possession of land or property which they hold unlawfully either executed upon a successful law suit or otherwise;

"fees" means money payable for any land transaction or service as prescribed by the Cabinet Secretary under regulations;

"file" means place in the relative parcel file;

"*Gazette*" means Kenya *Gazette* and County *Gazette*;

"geo-reference" means the reference of an object using a specific location either on, above or below the earth's surface;

"head lease" means a lease in respect of which a sublease is entered into;

"inhibition" means an order made under section 70, or a prohibition;

"instrument" means whether in physical or electronic form—

(a) any writing, including an enactment that creates or affects legal or equitable rights or liabilities;

(b) any covenant or condition expressed in an instrument or implied in a instrument under this or any other enactment relating to land; or

(c) any variation of an instrument, except where otherwise provided;

"interest" means a right in or over land;

"land" has the meaning assigned to it under Article 260 of the Constitution;

"land administration" means the process of determining, recording, updating and disseminating information about the ownership, value and use of land;

"land register" means the land register compiled under section 7;

"lease" means—

(a) a lease or sublease, whether registered or unregistered of land; or

(b) a short-term lease or agreement to lease;

"legal incapacity" means a person of unsound mind or a person under the age of eighteen years;

"lender" means a person to whom a charge has been given as security for the repayment of an advance of money or money's worth or to secure a condition;

"lessee" means a person to whom a lease is granted or a person who has accepted a transfer or assignment of a lease;

"lessor" means a person by whom a lease is granted and includes a person who has accepted the transfer or assignment of the reversion of a lease;

"licensee" has the same meaning assigned to it under the Land Act;

"licensor" means the person granting or giving a licence;

"lien" means the holding by a lender of any document of title relating to land or a lease as security for an advance of money or money's worth or the fulfillment of a condition;

"matrimonial home" means any interest in land that is owned or leased by one or both spouses and occupied by the spouses as their family home;

"matrimonial property" means any interest in land or lease that is acquired by a spouse or spouses during the subsistence of a marriage;

"parcel" means an area of land separately delineated on the cadastral map;

"parcel register" means the folio of the land register kept in respect of a parcel of land or a registered lease;

"partition" means the separation, by legal instrument, of the share in land or a lease held by owners in common so that each owner takes their share free of the rights of the others;

"periodic lease" means a lease from year to year, half year to half year, quarter to quarter, month to month, week to week or the like;

"private land" has the meaning assigned to it under Article 64 of the Constitution;

"proprietor" means—

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

"public land" has the meaning assigned to it under Article 62 of the Constitution and includes the coast foreshore, rivers, dam, lake reserves and other reserves as provided under the Survey Act (Cap. 299) or any other written law;

"register" means the register maintained under section 7 of the Act;

"Registrar" means the Chief Land Registrar, the Deputy Land Registrar, County Land Registrars and Land Registrars appointed under section 12 and 13;

"registration" means bringing of an interest in land or lease under the provisions of the Act and includes making of an entry, note or record in the land register;

"registration unit" means a land registration unit constituted under section 6 (1);

"registration section" means a division of a registration unit established under section 6 (2);

"registry" means land registry established under section 7;

"restriction" means an interest registered under section 76 and includes the Registrar's caveat;

"restrictive agreement" means—

(a) a restrictive covenant; or

(b) an agreement by an owner of land restricting the building on, use or other enjoyment of that land for the benefit of the owner of the land or neighboring parcel of land;

"Rules Committee" means the rules committee of the High Court;

"seal" includes an electronic seal;

"sectional plan" means a geo-referenced plan of units or a part of land as the case may be prepared by a surveyor and approved by the statutory body responsible survey of land;

"sectional unit" means a space that is situated within a building and described in a sectional plan by reference to floors, walls and ceilings within the buildings;

"signature" includes an advanced electronic signature, an electronic signature, a mark or writing ones name or initials, making ones initials on the instrument as an indication that one intends to bind himself or herself to the contents of the instrument;

"spouse" means either a husband or a wife married under any recognized law in Kenya;

"surveyor" means a surveyor as defined in the Survey Act (Cap. 299);

"transfer" means passing of an estate or interest in land or lease under this Act, whether for valuable consideration or otherwise;

"transferee" means a person who receives land, a lease or charge passed through a transfer;

"transferor" means the person who passes land, a lease or charge through a transfer;

"transmission" means the passing of land, a lease or a charge from one person to another by operation of law on death, insolvency or otherwise;

"trustee" includes personal representative;

"valuable consideration" includes marriage, but does not include a nominal consideration;

"valuer" means a valuer registered and licensed to practice as a valuer in accordance with the Valuers Act (Cap. 532); and

"unexhausted improvement" means—

(a) anything or any quality permanently attached to the land directly resulting from the expenditure of capital or labour and increasing the productive capacity, the utility, the sustainability of its environmental quality; or

(b) trees, standing crops or growing produce whether of an agricultural or horticultural nature.

[Act No. 28 of 2016, s. 2, Act No. 1 of 2020, s. 21.]

3. Application

Subject to section 4, this Act shall apply to—

(a) registration of interests in all public land as declared by Article 62 of the Constitution;

(b) registration of interests in all private land as declared by Article 64 of the Constitution; and

(c) registration and recording of community interests in land.

4. Limitation of application

This Act shall not prohibit or otherwise affect the system of registration under any law relating to mining, petroleum, geo-thermal energy or any other rights over land and land-based resources in respect of public land.

5. Conflict with other laws

Except as otherwise provided in this Act, no other written law, practice or procedure relating to land shall apply to land registered or deemed to be registered under this Act so far as it is inconsistent with this Act.

Part II – ORGANISATION AND ADMINISTRATION

Land Register, Land Registries and Offices

6. Registration units

(1) For the purposes of this Act, the Cabinet Secretary in consultation with the Commission and the county governments shall, by order in the Gazette, constitute an area or areas of land to be a land registration unit and may at any time vary the limits of any such units.

(2) Every registration unit shall be divided into registration sections, which shall be identified by distinctive names, and may be further divided into blocks, which shall be given distinctive numbers or letters or combinations of numbers and letters.

(3) 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.

(4) The office or authority responsible for land survey may, at any time, cause registration sections or blocks to be combined or divided, or cause their boundaries to be varied, and immediately inform the Registrar of the changes.

(5) Any order by the Cabinet Secretary under this section shall be published in the *Gazette* and in at least two daily newspapers of nationwide circulation.

(6) The land registration units shall be established at county level and at such other levels to ensure reasonable access to land administration and registration services.

(7) For purposes of administration and effective land management, the county governments shall have access to all documents maintained in the registration units.

[Act No. 28 of 2016, s. 3.]

7. Land registry

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

(a) a land register, in the form to be determined by the Cabinet Secretary;

(b) the cadastral map;

(c) parcel files containing the instruments and documents that support subsisting entries in the land register;

(d) any plans which shall, after a date appointed by the Cabinet Secretary, be geo-referenced;

(e) 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;

(f) an index, in alphabetical order, of the names of the proprietors; and

(g) a register and a file of powers of attorney.

(2) The Registrar shall, upon payment of the prescribed fee, make information in the land registry accessible to any person.

(3) In establishing the land registry, the Cabinet Secretary, shall be guided by the principles of devolution set out in Articles 174 and 175 of the Constitution.

(4) The land register shall include the following features—

(a) the property section;

(b) the proprietorship section;

(c) the encumbrance section;

(d) the user of the land; and

(e) any other feature required under any law or otherwise considered necessary by the Cabinet Secretary.

(5) Registration shall be effected by an entry in the register in such form as may from time to time be prescribed by the Cabinet Secretary, and by cancellation of the entry, if any, which it replaces.

(6) Subject to the provisions of this Act, the Registrar may at any time, open a new edition of a register showing only the subsisting entries and omitting therefrom all entries that have ceased to have effect.

(7) The Registrar may cancel any entry in the register which have ceased to have effect.

[Act No. 28 of 2016, s. 4.]

8. Community Land Register

(1) Subject to the legislation on community land made pursuant to Article 63 of the Constitution, there shall be maintained in each registration unit, a community land register in which shall be kept—

(a) a cadastral map showing the extent of the community land and identified areas of common interest;

(b) the name of the community identified in accordance with Article 63(1) of the Constitution and any other law relating to community land;

(c) a register of members of the community;

(d) the user of the land;

(e) the identity of those members registered as group representatives;

(f) the names and identity of the members of the group; and

(g) any other requirement as shall be required under the law relating to community land.

(2) The Registrar shall issue a certificate of title or certificate of lease in the prescribed form.

(3) The Registrar shall not register any instrument purporting to dispose of rights or interest in community land except in accordance with the law relating to community land.

(4) For the avoidance of doubt the provisions in this section shall not apply to unregistered community land held in trust by county governments on behalf of communities under Article 63(3) of the Constitution.

9. Maintenance of documents

(1) The Registrar shall maintain the register and any document required to be kept under this Act in a secure, accessible and reliable format including—

(a) publications, or any matter written, expressed, or inscribed on any substance by means of letters, figures or marks, or by more than one of those means, that may be used for the purpose of recording that matter;

(b) electronic files; and

(c) an integrated land resource register.

(2) The register shall contain the following particulars—

(a) name, personal identification number, national identity card number, and address of the proprietor;

(b) in the case of a body corporate, name, postal and physical address, certified copy of certificate of incorporation, personal identification numbers and passport size photographs of persons authorized and where necessary attesting the affixing of the common seal;

(c) names and addresses of the previous proprietors;

(d) size, location, user and reference number of the parcel;

(da) passport number, telephone number and email address, where applicable; and

(e) any other particulars as the Registrar may, from time to time, determine.

[Act No. 28 of 2016, s. 5.]

10. Public access to the register

Subject to the Constitution and any other law regarding freedom of and access to information, the Registrar shall make information in the register accessible to the public by electronic means or any other means as the Chief Land Registrar may reasonably prescribe.

11. Seal of Registry

Each registry shall have an official seal, and every instrument bearing the imprint of the seal shall be received in evidence and, unless the contrary is proved, shall be deemed without further proof to be issued by or under the direction of the Registrar.

12. Appointment of Land Registrars and other officers

(1) There shall be appointed by the Public Service Commission, a Chief Land Registrar, a Deputy Chief Land Registrar, County Land Registrars, Land Registrars, and such other officers who shall be public officers as may be considered necessary for the effective discharge of functions under this Act.

(2) Any officer appointed under this Act shall be competitively recruited and vetted by the Public Service Commission.

[Act No. 28 of 2016, s. 6.]

13. Qualifications for appointment of Registrar

(1) A person shall not qualify for appointment as Chief Land Registrar unless such a person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) is an advocate of the High Court of Kenya of not less than ten years standing;

(d) has had at least ten years experience in land administration or management; and

(e) meets the requirements of chapter six of the Constitution.

(2) A person shall not be qualified for appointment if that person—

(a) has been convicted of a felony;

(b) is an undischarged bankrupt;

(c) has not met his or her legal obligations in relation to tax;

(d) has benefited from or facilitated an unlawful and irregular allocation or acquisition of land or other public property; or

(e) has been removed from office for contravening the provisions of the Constitution.

13A. Qualifications for appointment of other land Registrars

(1) A person shall not qualify for appointment as Deputy Chief Land Registrar unless such a person is an Advocate of the High Court of Kenya of not less than ten years' standing, a land surveyor, a land economist or an expert in any other relevant field.

(2) A person shall not qualify for appointment as a County Land Registrar unless such a person is an Advocate of the High Court of Kenya of not less than five years' standing or an Advocate of the High Court with at least five years' experience in land administration, a land surveyor, a land economist or an expert in any other relevant field.

(3) A person shall not qualify for appointment as a Land Registrar unless such a person is an Advocate of the High Court of Kenya, a land surveyor, a land economist or an expert in any other relevant field.

(4) Upon appointment, the Registrar shall take an oath of office in the prescribed form.

(5) Upon the commencement of this Act, any person holding the position of Chief Land Registrar, and Land Registrars who do not meet the qualifications prescribed in this Act shall be redeployed to other positions and duties within the public service.

[Act No. 28 of 2016, s. 7.]

14. General powers of Land Registrars

(1) The Chief Land Registrar, County Land Registrars or any other land registrars may, in addition to the powers conferred on the office of the Registrar by this Act—

(a) 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) summon any person to appear and give any information or explanation in respect to land, a lease, charge, instrument, certificate, document or plan relating to the land, lease or charge in question, and that person shall appear and give the information or explanation;

(c) 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 Act is not performed;

(d) cause oaths to be administered or declarations taken and may require that any proceedings, information or explanation affecting registration shall be verified on oath or by statutory declaration; and

(e) order that the costs, charges and expenses as prescribed under this Act, incurred by the office or by any person in connection with any investigation or hearing held by the Registrar for the purposes of this Act shall be borne and paid by such persons and in such proportions as the Registrar may think fit.

(2) In addition to the powers conferred by section 14 (1) the Chief Land Registrar shall—

(a) formulate practice instructions and guidelines for implementation of the land registration policies and strategies;

(b) set standards for the registries;

(c) supervise the registries;

(d) prepare and submit an annual report on the state of land registration to the Commission and the Cabinet Secretary;

(e) hear and determine appeals from the registries;

(f) approve the format of any instrument which is not in accordance with the prescribed form; and

(g) perform such other functions or duties as may be provided under any written law.

(3) The Deputy Chief Land Registrar shall be the principal assistant of the Chief Land Registrar in the execution of the functions of the Chief Land Registrar.

(4) The County Land Registrar shall be responsible for administering the registries within the respective county and in the implementation of policies, guidelines and strategies in accordance with this Act.

(5) The Registrar shall not be held personally liable for lawful acts discharged by the Registrar under this Act in good faith.

[Act No. 28 of 2016, s. 8.]

15. Cadastral map

(1) The office or authority responsible for the survey of land shall prepare and thereafter maintain a map or series of maps, to be known as the cadastral map, for every registration unit.

(2) The parcel boundaries on such maps shall be geo-referenced and surveyed to such standards as to ensure compatibility with other documents required under this Act or any other law.

Maps, Parcels and Boundaries

16. Power to alter boundary lines and to prepare new editions

(1) The office or authority responsible for the survey of land may rectify the line or position of any boundary shown on the cadastral map based on an approved subdivision plan, approved combination plan or any other approved plan necessitating the alteration of the boundary, in the prescribed form, and in accordance with any law relating to subdivision of land that is for the time being in force.

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

(3) The office or authority responsible for the survey of land may prepare new editions of the cadastral map or any part thereof, and may omit from the new map any matter that it considers obsolete.

(4) Any rectification to the cadastral map in accordance with this section shall be notified to the Registrar by the submission of the rectified cadastral map and all the approvals that necessitated the amendments.

[Act No. 28 of 2016, s. 9.]

17. Approval for further surveys

(1) Further surveys may be made for any purpose connected with this Act, but such surveys shall be used to amend the cadastral map only if it is approved by the office or authority responsible for the survey of land.

(2) This section shall not preclude the Registrar from keeping in the registry records of cadastral information and maps approved by the office or authority responsible for survey.

(3) The office or authority responsible for the survey of land shall submit to the Commission a copy of the cadastral maps relating to public land and the Commission shall be a depository of the maps.

[Act No. 28 of 2016, s. 10.]

18. Boundaries

(1) Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.

(2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.

(3) Except where, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary:

Provided that where all the boundaries are defined under section 19 (3), the determination of the position of any uncertain boundary shall be done as stipulated in the Survey Act (Cap. 299).

19. Fixed boundaries

(1) If the Registrar considers it desirable to indicate on a filed plan approved by the office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if an interested person has made an 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 in the register 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 the plan shall be deemed to accurately define the boundaries of the parcel.

(3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this section.

20. Maintenance of boundaries

(1) Every proprietor of land shall maintain in good order the fences, hedges, stones, pillars, beacons, walls and other features that demarcate the boundaries, pursuant to the requirements of any written law.

(2) The Registrar may in writing, order the demarcation within a specified time of any boundary mark, and any person who fails to comply with such an order commits an offence and is liable on conviction to a fine not exceeding two hundred thousand 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 for the care and maintenance of the boundary feature who allows the boundary feature or any part of it to fall into disrepair, be destroyed or removed commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings.

21. Interference with boundary features

(1) Any person who defaces, removes, injures or otherwise impairs a boundary feature or any part of it unless authorized to do so by the Registrar commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two hundred thousand shillings or to both.

(2) Any person convicted of an offence under subsection (1), whether or not any penalty is imposed upon the person, is liable to pay the cost of restoring the boundary feature, and the cost shall be recoverable as a civil debt by any person who is responsible under this section for the maintenance of the feature.

22. Combinations and subdivisions

(1) Subject to authentication of the cadastral map, if 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.

(2) Upon the application of a proprietor of a parcel for the division of that parcel into two or more parcels, and authentication of the cadastral map, 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 nothing shall be done under this section that would be inconsistent with the provisions of this Act or any other written law.

23. Reparcellation

(1) Subject to section 15 and authentication of the cadastral map, 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 the parcels is registered and of any cautioner, the Registrar may—

(a) cancel the registers relating to those parcels and prepare new registers in accordance with the new edition of the cadastral map; or

(b) refuse to effect the reparcellation if the Registrar considers that the proposed reparcellation involves substantial changes of ownership, which should be effected by transfers without invoking this section, in which case, the Registrar shall direct the proprietors accordingly.

(2) Upon reparcellation, the new parcels shall vest in the persons in whose names they are registered.

Effect of Registration

24. Interest conferred by registration

Subject to this Act—

(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; and

(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 or expressed agreements, liabilities or incidents of the lease.

25. Rights of a proprietor

(1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, 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) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

26. Certificate of title to be held as conclusive evidence of proprietorship

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the

encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

27. Transfer without valuable consideration

(1) A proprietor who has acquired land, a lease or a charge by transfer without valuable consideration holds it subject to—

(a) any unregistered rights or interests subject to which the transferor held it; and

(b) the provisions of the Insolvency Act (Cap. 53) so far as they are applicable in the circumstances.

(2) When registered, such a transfer has the same effect as a transfer for valuable consideration.

[Act No. 19 of 2015, s. 173.]

28. Overriding interests

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

(a) *deleted by Act No. 28 of 2016, s. 11(a)*;

(b) trusts including customary trusts;

(c) rights of way, rights of water and profits subsisting at the time of first registration under this Act;

(d) natural rights of light, air, water and support;

(e) rights of compulsory acquisition, resumption, entry, search and user conferred by any other written law;

(f) *deleted by Act No. 28 of 2016, s. 11(b)*;

(g) charges for unpaid rates and other funds which, without reference to registration under this Act, are expressly declared by any written law to be a charge upon land;

(h) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;

(i) 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; and

(j) any other rights provided under any written law.

Provided that the Registrar may direct the registration of any of the liabilities, rights and interests hereinbefore defined in such manner as the Registrar deems necessary.

[Act No. 28 of 2016, s. 11.]

29. Actual notice

Every proprietor, at the time of 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.

Certificates of Title, Certificates of Lease and Searches

30. Certificate of title and Certificate of lease

(1) The Registrar may, if requested by a proprietor of land whose name appears in the register or a lease where no certificate of title or certificate of lease has been issued, issue to him or her a certificate of title 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.

(2) Notwithstanding subsection (1)—

(a) only one certificate of title or certificate of lease shall be issued in respect of each parcel or lease; and

(b) no certificate of title or certificate of lease shall be issued unless the lease is for a certain period exceeding twenty-one years.

(3) A certificate of title or certificate of lease shall be prima facie evidence of the matters shown in the certificate, and the land or lease shall be subject to all entries in the register.

(4) If there is more than one proprietor, unless they are tenants in common, the proprietors shall agree among themselves on which of them shall receive the certificate of title or the certificate of lease, and if they fail to agree, the certificate of title or the certificate of lease shall be filed in the registry.

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

[Act No. 28 of 2016, s. 12.]

31. Production of certificate

(1) If a certificate of title 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 of title or the certificate of lease shows all subsisting entries in the register, a note of the registration shall be made on the certificate of title or the certificate of lease.

(2) Where the disposition is a transfer, the certificate shall, when produced, be cancelled, and in that case a new certificate may be issued to the new proprietor.

(3) Where the disposition is a charge, the certificate shall be delivered to the chargee.

32. Dispositions of leases and charges

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

33. Lost or destroyed certificates and registers

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

(2) The Registrar shall require a statutory declaration to be made by all the registered proprietors, and in the case of a company, the director, where property has been charged, the chargee that the certificate of title or a certificate of lease has been lost or destroyed.

(3) If the Registrar is satisfied with the evidence proving the destruction or loss of the certificate of title or certificate of lease, and after the publication of such notice in the Gazette and in any two local newspapers of nationwide circulation, the Registrar may issue a replacement certificate of title or certificate of lease upon the expiry of sixty days from the date of publication in the Gazette or circulation of such newspapers; whichever is first.

(4) If a lost certificate of title or certificate of lease is found, it shall be delivered to the Registrar for cancellation.

(5) The Registrar shall have powers to reconstruct any lost or destroyed land register after making such enquiries as may be necessary and after giving due notice of sixty days in the Gazette.

(6) Upon the issue of a replacement certificate no further dealings shall be carried out using the replaced certificate.

[Act No. 28 of 2016, s. 13.]

34. Searches and copies

A person who requires an official search in respect of any parcel, shall be entitled to receive particulars of the subsisting entries in the register, certified copies of any document, the cadastral map, or plan filed in the registry upon payment of the prescribed fee.

35. Evidence

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

(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, cadastral map or filed plan shall be received in all proceedings as conclusive evidence of the matter or transaction that it records.

(4) No process for compelling the production of the register, or of the cadastral 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 III – DISPOSITION AFFECTING LAND

General Principles

36. Dispositions and dealings affecting land

(1) A lease, charge or interest in land shall not be disposed of or dealt with except in accordance with this Act, and any attempt to dispose of any lease, charge or interest in land otherwise than in accordance with this Act or any other law, shall not, extinguish, transfer, vary or affect any right or interest in that land, or in the land, lease or charge.

(2) Nothing in this section shall be construed as preventing any unregistered instrument from operating as a contract.

(3) The Cabinet Secretary may prescribe terms and conditions of sale, which—

(a) shall apply to contracts by correspondence, subject to any modification or any stipulation or any intention to the contrary expressed in the correspondence; and

(b) 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 an instrument presented for registration later than three months from the date of the instrument, then, as well as registration fee, and additional fee equal to the registration fee shall be payable for each of the three months which have elapsed since that date:

Provided that in no such case shall the sum of the additional fees, exceed two times the original registration fees payable.

(5) 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 which the application was made to the Registrar.

(6) 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 office 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.

(7) Where more than one instrument or application are presented on the same day such that in the opinion of the Registrar there is doubt as to their order of priority, the Registrar shall reject the registration and shall inform the applicants of such rejection.

(8) Where any person proposing to deal with registered land has, with the consent in writing of the proprietor, applied for 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.

(9) If a properly executed instrument affecting the proposed dealing is presented for registration, within the suspension period, the 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:

Provided that upon commencement of the Act, any instrument that shall not have been registered will be required to be so registered within three months.

(10) Where on the registration of an instrument relating to a disposition under this Act, the interests of —

(a) a lessor and lessee;

(b) chargor and chargee, or

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

the 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 disposition.

[Act No. 28 of 2016, s. 14.]

37. Transfers

(1) A proprietor may transfer land, a lease or a charge to any person with or without consideration, by an instrument in the prescribed form or in such other form as the Registrar may in any particular case approve.

(2) A transfer shall be completed by—

(a) filing the instrument; and

(b) registration of the transferee as proprietor of the land, lease or charge.

38. [Deleted by Act No. 1 of 2020, s. 22]

39. [Deleted by Act No. 1 of 2020, s. 23]

40. Transfer to take effect immediately

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

41. Conditions repugnant to interest transferred

(1) A condition or limitation is void if it purports to—

(a) restrain absolutely a transferee or any other person from disposing of the interest transferred; or

(b) determine the interest of the transferee on the happening of any future event or on the failure of any future event to happen.

(2) Except as otherwise provided in this Act, no transfer of land shall contain a direction that the land shall be used or enjoyed by the transferee in a particular manner.

(3) This section does not apply to *Wakfs*.

42. Transfer of part

No part of the land comprised in a register shall be transferred unless the proprietor has first subdivided the land and duly registered each new subdivision.

43. Instruments of dispositions

(1) Every instrument effecting a disposition of land under this Act shall be in the form prescribed in relation to that disposition under this Act or any other written law.

(2) No instrument effecting any disposition of an interest in land under this Act shall operate to sell or assign land or create, transfer or otherwise affect any land, lease or charge until it has been registered in accordance with the laws relating to the registration of instruments affecting the land in respect of which the disposition has been made.

(3) The provisions of subsection (2), shall not apply to any disposition that is exempt from registration.

(4) This section shall not apply to or affect the operation of any contract for a disposition under this Act.

[Act No. 28 of 2016, s. 17.]

44. Executions of instruments in writing

(1) Except as otherwise provided in this Act, every instrument effecting any disposition under this Act shall be executed by each of the parties consenting to it, in accordance with the provisions of this section.

(2) The execution of any instrument referred to in subsection (1), by a person shall consist of appending a person's signature on it or affixing the thumbprint or other mark as evidence of personal acceptance of that instrument.

(3) The execution of any instrument referred to in section (1) by a corporate body, association, cooperative society or other organisation shall be effected in accordance with the provisions of the relevant applicable law and in the absence of provisions on execution of instruments, the execution shall be effected in the presence of either an advocate of the High Court of Kenya, a magistrate, a Judge or a notary public.

(3A) Where practicable, an instrument processed and executed electronically by persons consenting to it by way of an advanced electronic signature or an electronic signature shall be deemed to be a validly executed document.

(4) An instrument executed outside Kenya shall not be registered unless it has been endorsed or is accompanied by a certificate in the prescribed form completed by a notary public or such other person as the Cabinet Secretary may prescribe.

(5) The transferee shall in addition to executing the instrument, attach the following—

(a) a copy of an identity card or passport; and

(b) a copy of a Personal Identification Number certificate;

(c) passport-size photographs;

(d) where applicable, a marriage certificate; or

(e) a copy of the certificate of incorporation, in the case of a corporate entity; or

(e) such other identification documents as the Cabinet Secretary may prescribe.

[Act No. 28 of 2016, s. 18, Act No. 1 of 2020, s. 24.]

45. Verification of execution

(1) Subject to subsection (3), a person executing an instrument shall—

(a) appear before the Registrar, public officer or other person as is prescribed; and

(b) be accompanied by a credible witness for the purpose of establishing identity, unless the person is known to the Registrar, public officer or other person.

(2) The Registrar, public officer or other person shall identify the person and ascertain whether the person 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 the Registrar considers that it cannot be obtained or it can only be obtained only with difficulty and is otherwise satisfied that the document has been properly executed;

(b) if the Registrar knows the document has been properly executed, and shall record on the document the reasons for dispensing with the appearance of the parties; or

(c) if the instrument has been electronically processed and executed by the parties consenting to it.

[Act No. 1 of 2020, s. 25.]

46. Stamping

An instrument required by law to be stamped shall not be accepted for registration unless it is stamped in accordance with the Stamp Duty Act (Cap. 480).

47. Minors

(1) The name of a person under the age of eighteen years may be entered in the register to enable the minor's interest to be held in trust and shall be registered under the name of the guardian either on first registration or as a transferee or on transmission.

(2) Nothing in this section enables a person under eighteen years of age to deal with land or any interest in land by virtue of such registration, and, if the Registrar knows a child has been registered, the Registrar shall enter a restriction accordingly.

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

48. Agents and persons under disability

(1) Except as provided in subsection (3), 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 verified in accordance with section 45.

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

(3) The guardian of a person under a legal incapacity or, if there is no such guardian, a person appointed under some written law to represent that person, may make an application, do any act and be party to any proceeding on behalf of that person, and may generally represent that person for the purposes of this Act.

(4) Before accepting a document executed by a guardian or other person so appointed to represent a person under a legal incapacity, the Registrar shall—

(a) be satisfied that the person claiming to be the guardian is entitled to execute the document; or

(b) require the production of the appointing instrument of the person, and shall file a note of the explanation to that effect.

49. Gift to person under incapacity

A person with a legal incapacity who has been registered as a proprietor of land, a lease or a charge acquired by way of gift may, repudiate the gift within six months after the person ceases to be under a legal incapacity, if the person has not already disposed of the subject-matter, but no such repudiation shall be effective until—

(a) the person has transferred the land, lease or charge to the donor, who is bound to accept it; and

(b) the transfer has been registered.

Dispositions Prejudicial to the Creditor

50. Court orders on prejudicial dispositions

The court may order that any interest in private land acquired or received under or through certain prejudicial dispositions of those interests in private land made by a debtor, or the value of those interests in land, be restored for the benefit of unsecured creditors and the order made under this section shall not increase or prejudice the value of any security held by a creditor over the interest in land of the debtor.

51. Prejudicial dispositions

(1) A disposition under this Act shall be deemed to prejudice a creditor if—

(a) the person making the disposition is unable to pay all their debts without recourse to that private land or any interest in it; and

(b) the disposition hinders, delays or defeats or is intended to hinder, delay or defeat the exercise by a creditor of any right of recourse to land or any interest in land in respect of which that disposition has been made in order to satisfy in whole or in part any debt owed to the creditor by the person making the disposition, subject to subsection (2).

(2) A disposition shall not be deemed to prejudice a creditor if it is made with the intention of preferring one creditor over another.

52. Dispositions to prejudice creditors may be set aside

(1) A creditor, public officer, national or county government or public entity charged with the responsibility for collection of money owing by any person to the national or county government or any part of may apply to the court under this section for an order of the court to set aside a prejudicial disposition.

(2) An application made under this section shall—

(a) specify the land to which it relates;

(b) specify the disposition alleged to be prejudicial;

(c) be served on—

(i) the person who has made the disposition;

(ii) the person in whose favour the disposition has been made;

(iii) any other person involved in the disposition from whom compensation is sought.

(3) Subject to section 53, on being satisfied that an applicant has been prejudiced by a disposition to which this Part applies the court may order—

(a) any person who acquired or received land under that disposition or through a person who acquired or received land under such a disposition—

(i) to pay any amount of compensation within any time to the applicant which the court shall specify;

(ii) to re-assign a land or a derivative right to the person who has made the prejudicial disposition; or

(iii) to take any other action which the court may specify; or

(b) the debtor who made the prejudicial disposition—

(i) to hold the restored land through the re-assignment of land or derivative right under subsection (3)(a)(ii) as a trustee for debtor's creditors; and

(ii) to deal with the land so held only in accordance with any orders that the court may issue.

53. Protection of person receiving land

(1) If a person acquires or receives land in respect of which the court could make an order for restoration or for the payment of reasonable compensation, the court shall not make that order against that person if that person proves that the land was—

(a) acquired or received in good faith and without knowledge of the fact that it has been the subject of a disposition to which this part applies; or

(b) acquired or received through a person who acquired or received it in the circumstances set out in paragraph (a).

(2) Reference to knowledge in this section shall include actual, constructive and imputed knowledge.

Part IV – LEASES

54. Registration of Leases

(1) Upon the registration of a lease containing an agreement, express or implied, by the lessee that the lessee shall not transfer, sub-let, charge or part with possession of any of the leased land 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 this Act has been produced to the Registrar.

(2) The Registrar, upon receipt of adequate proof, may dispense with the consent of the lessor—

(a) where satisfactory evidence is given to the registrar and the Registrar is satisfied that the lessor is dead and that there is no personal representative of the lessor; or

(b) if the Registrar considers that the consent of the lessor or the personal representative, as the case may be, cannot be obtained or that it can only be obtained with difficulty or at an unreasonable expense and shall, after making such enquiries as the Registrar may consider necessary in the circumstances, record on the document his or her reasons for dispensing with the consent and note as such in the register;

(c) on any of the grounds set out under section 39(4).

(3) The registration of interests in land under the law relating to sectional properties shall be carried out in the manner prescribed under that Act.

(4) The land register maintained under section 7 of this Act shall be deemed to be the land register for purposes of the Sectional Properties Act (Cap. 286).

(5) The Registrar shall register long-term leases and issue certificates of lease over apartments, flats, maisonettes, townhouses or offices having the effect of conferring ownership, if the property comprised is properly geo-referenced and approved by the statutory body responsible for the survey of land.

(6) The Cabinet Secretary may prescribe regulations for the registration of long term-leases.

[Act No. 28 of 2016, s. 19.]

55. Lessor's consent to dealing with leases

If a lease contains a condition, express or implied, by the lessor that the lessor shall not transfer, sub-let, charge or charge or part with the possession of the land leased or any part of it without the written consent of the lessor, and the dealings with the lease shall not be registered unless—

(a) the consent of the lessor has been produced to, and authenticated to the satisfaction of the Registrar and the Registrar shall not register any instrument purporting to transfer or create any interest in that land; and

(b) a land rent clearance certificate and the consent to the lease, certifying that no rent is owing to the Commission in respect of the land, or that the land is freehold, has been produced to the Registrar.

[Act No. 28 of 2016, s. 20.]

Part V – CHARGES

56. Form and effect of Charges

(1) A proprietor may by an instrument, in the prescribed form, charge any land or lease to secure the payment of an existing, future or a contingent debt, other money or money's worth, or the fulfillment of a condition and, unless the chargee's remedies have been by instrument, expressly excluded, the instrument shall, 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, 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 if no such date is specified or repayment is not demanded by the charge on the date specified, the money shall be deemed to be repayable three months after the service of a demand, a written, 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) The Registrar shall not register a charge, unless a land rent clearance certiticate, certifying that no rent is owing in respect of the land, and the consent to charge has been presented, or unless the land is freehold.

(5) A charge shall have effect as a security only and shall not operate as a transfer.

(5A) No certificate shall be required under subsection (4) if the charge relates to—

(a) a unit in a condominium;

(b) an office in a building; or

(c) a sub-lease where the lease is by virtue of any law subject to the full payment of the rent by the head-lessor.

(6) There shall be included, in an instrument of charge, securing the fulfillment 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 application of purchase money by the charge, of the money which may arise on the exercise by the chargee's 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.

[Act No. 28 of 2016, s. 21.]

57. Second and subsequent charge

(1) A proprietor whose land or lease 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, 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.

(2) Where a second or subsequent charge is to be created, the consent of the first chargee's shall be obtained before the second or subsequent charge is created.

[Act No. 28 of 2016, s. 22.]

58. Statutory charge

Nothing in this Part shall affect the provisions of any Act that provides for the registration of a notification or note in respect of any sum of money owing to a public body.

59. Lender’s consent to transfer

If a charge contains a condition, express or implied by the borrower that the borrower will not, without the consent of the lender, transfer, assign or lease the land or in the case of a lease, sublease, no transfer, assignment, lease or sublease shall be registered until the written consent of the lender has been produced to the Registrar.

Part VI – TRANSMISSIONS AND TRUSTS

60. Transmission on death of joint proprietor

If any of the joint tenants of any land, lease or charge dies, the Registrar shall, upon proof of the death, delete the name of the deceased tenant from the register by registering the death certificate.

61. Transmission on death of a sole proprietor or proprietor in common

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

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

(a) any transfer by the personal representative; and

(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.

62. Effect of transmission on death

(1) Subject to any restriction on a person’s power of disposing of any land, lease or charge contained in an 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 that are unregistered but enforceable and subject to which the deceased proprietor held the land, lease or charge, but for the purpose of any dealing the person

shall be deemed to have been registered as proprietor of the land lease or chage with all the rights conferred by this Act on a proprietor who has acquired land, a lease or a charge, as the case may be, for valuable consideration.

(2) The registration of a person as provided in section 61, shall relate back to and take effect from the date of the death of the proprietor.

63. Transmission on bankruptcy

(1) On production to the Registrar of a certified copy of the order of court adjudging a proprietor bankrupt, or directing the estate of a deceased proprietor to be administered in accordance with section 375 of the Insolvency Act (Cap. 53), the Registrar shall register the bankruptcy trustee, or the trustee appointed under that section, as proprietor of any land, lease or charge of which the bankrupt or the deceased proprietor is proprietor, in place of that bankrupt or proprietor.

(2) In making an entry in the register for the purpose of subsection (1), the Registrar shall describe the bankruptcy trustee, or the trustee appointed under section 375 of the Insolvency Act (Cap. 53), as "trustee of the property of (.....), a bankrupt.

[Act No. 19 of 2015, s. 174.]

64. Liquidation

(1) If a company is being wound up, the liquidator shall—

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

(b) satisfy the Registrar that the person has complied with the Companies Act (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 file the copy of the resolution or order.

(2) An instrument executed by or on behalf of a company in liquidation that has been presented for registration after the appointment of the liquidator has been entered under subsection (1) 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, and be signed by the liquidator whose signature shall be verified in accordance with section 45.

(3) Where a vesting order has been made under the Companies Act (Cap. 486) the liquidator shall present the order to the Registrar who shall register the liquidator as proprietor of any land, lease or charge to which the order relates.

65. Transmission in other cases

If a person has become entitled to any land, a 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 an interested person supported by instruments of transfer or such evidence as the Registrar may require, register the person entitled, as the proprietor.

66. Trusts not to be entered

(1) A person acquiring land, a lease or a charge in a fiduciary capacity may be described in that capacity in the instrument of acquisition and 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 that declares, or is deemed to declare, a trust, or a certified copy, may be deposited with the Registrar for safe custody; but the 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, the proprietor shall hold the land, lease or charge subject to any unregistered liabilities, rights or interests to which it is subject by

virtue of the instrument creating the trust, and for the purpose of any registered dealings, the proprietor shall be deemed to be the absolute proprietor, and no person dealing with the land, a lease or a charge registered under this section shall be deemed to have notice of the trust, nor shall any breach of the trust create a right to indemnity under this Act.

67. Survivor of trustees

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

Part VII – RESTRAINTS ON DISPOSITION

Inhibitions

68. Power of the court to inhibit registered dealings

(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 a 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, shall be sent to the Registrar, who shall register it in the appropriate register.

(3) An inhibition shall not bind or affect the land, lease or charge until it has been registered.

69. Effect of inhibition

So long as an inhibition remains registered, any instrument that is inconsistent with the inhibition shall not be registered.

70. Cancellation of inhibition

The registration of an inhibition shall not be cancelled except in the following cases—

(a) on the expiration of the time stated in the inhibition;

(b) on proof to the satisfaction of the Registrar of the occurrence of an event stated in the inhibition;

(c) on the land, lease or charge being sold by a charge, unless such sale is itself inhibited; or

(d) by a consequent order of the court.

Cautions

71. Lodging of cautions

(1) A person who—

(a) claims the right, whether contractual or otherwise, to obtain an interest in any land, lease or charge, capable of creation by an instrument registrable under this Act;

(b) is entitled to a licence; or

(c) has made an application for a bankruptcy order against the proprietor of any registered land, lease or charge.

(2) A caution may either—

(a) forbid the registration of dispositions and the making of entries; or

(b) forbid the registration of dispositions and the making of entries to the extent expressed in the caution.

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

(4) The Registrar may reject a caution that is unnecessary or whose purpose can be effected by the registration of an instrument under this Act.

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

[Act No. 19 of 2015, s. 175.]

72. Notice and effect of caution

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

(2) A disposition that is inconsistent with the caution shall not be registered while the caution is still registered except with the consent of the cautioner or by the order of the court.

73. Withdrawal and removal of caution

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

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

(3) If a cautioner has not raised any objection at the expiry of the time stated, the Registrar may remove the caution.

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

(5) After the expiry of thirty days from the date of the registration of a transfer by a chargee in exercise of the chargee's power of sale under the law relating to land, the Registrar shall remove any caution that purports to prohibit any dealing by the chargee that was registered after the charge by virtue of which the transfer has been effected.

(6) On the withdrawal or removal of a caution, its registration shall be cancelled, and any liability of the cautioner previously incurred under section 74 shall not be affected by the cancellation.

74. Second caution in respect of the same matter

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

75. Wrongful cautions

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 sustained damage, to pay compensation to such person.

Restrictions

76. Restrictions

(1) For the purposes of compulsory acquisition 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, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.

(2) A restriction may be expressed to endure—

(a) for a particular period;

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

(c) until a further order is made,

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

(2A) A restriction shall be registered in the register and may prohibit or restrict either all dealings in the land or only those dealings which do not comply with specified conditions.

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

[Act No. 28 of 2016, s. 23, Act No. 15 of 2019, s. 16.]

77. Notice and effect of restriction

(1) The Registrar shall give notice, in writing, of a restriction to the proprietor affected by the restriction.

(2) An instrument that is inconsistent with a restriction shall not be registered while the restriction is still registered except by order of the court or of the Registrar.

[Act No. 28 of 2016, s. 24.]

78. Removal and variation of restrictions

(1) The Registrar may, at anytime and on application by any person interested or at the Registrar's own motion, and after giving the parties affected by the restriction an opportunity of being heard, order the removal or variation of a restriction.

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

[Act No. 28 of 2016, s. 25.]

Part VIII – RECTIFICATION AND INDEMNITY

79. Rectification by Registrar

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

(a) in formal matters and in the case of errors, mistakes or omissions not materially affecting the interests of any proprietor;

(b) in any case and at any time with the consent of all affected parties;

(c) if upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel;

(d) for purposes of updating the register; or

(e) for purposes of correcting the name, address or other particulars of the proprietor upon the written application by the proprietor in a prescribed form.

(2) No alteration affecting the title of the proprietor may be made pursuant to sub-section (1) without the proprietor' s consent unless—

(a) the proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission; or

(b) it would for any other reason be unjust for the alteration not to be made.

Provided that a written notice of ninety days shall be given to the proprietor of such intention to make the alteration.

(3) 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.

(3A) A person aggrieved by the decision of the Registrar under this section may apply to the Court for any necessary orders.

(4) The Cabinet Secretary may by regulations prescribe the guidelines that the Regisffar shall follow before rectifying or directing rectification under this section and without prejudice to the generality of the foregoing, the regulations may provide for—

(a) the process of investigation including notification of affected parties;

(b) hearing of the matters raised; and

(c) the criteria to be followed in coming up with the decision.

[Act No. 28 of 2016, s. 26.]

80. Rectification by order of Court

(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified to affect the title of a proprietor, unless the 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 any act, neglect or default.

[Act No. 28 of 2016, s. 27.]

81. Right to indemnity

(1) Subject to the provisions of this Act 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 Act; or

(b) 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 Act,

shall be entitled to indemnity.

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

82. Amount of indemnity

An indemnity awarded in respect of the loss of any interest in land, shall not exceed—

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

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

83. Procedure for claiming indemnity

(1) The Court may, on the application of any interested party, determine whether a right of indemnity has arisen under this Part and, award indemnity, and may add any costs and expenses properly incurred in relation to the matter.

(2) A person claiming indemnity under section 81 shall apply to the Chief Land Registrar in the prescribed manner for investigation and consideration.

(3) Any person who is aggrieved with the decision of the Chief Land Registrar may appeal to the Court against the decision in the prescribed manner.

[Act No. 28 of 2016, s. 28, Act No. 1 of 2020, s. 26.]

84. Recovery of indemnity paid

If any funds are paid by way of indemnity under this Part, the Cabinet Secretary shall be entitled to recover by suit or otherwise the amount so paid from any person who has caused or substantially contributed to the loss by fraud or negligence, and to enforce any express or implied agreement or other right which the person who has been indemnified would have been entitled to enforce in relation to the matter in respect of which the indemnity has been paid.

85. Errors in survey

(1) A claim to indemnity shall not arise between the national or county government and a proprietor, 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 cadastral map.

(2) As between a proprietor and any person from or through whom the proprietor 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 cadastral map, after a period of six months from the date of registration of the instrument under which the proprietor acquired the land.

86. Review of the decision of the Registrar

(1) If any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on the Registrar by this Act, the Registrar or any aggrieved person shall state a case for the opinion of the Court, and thereupon the Court shall give its opinion, which shall be binding upon the parties.

(2) The Rules Committee shall make rules on the procedures to be followed by the Registrar or an aggrieved person under subsection (1).

87. Meaning of "opportunity of being heard"

(1) If this Act requires that a person be given an opportunity to be heard before a particular thing is to be, or may be done, that person shall be deemed to have been given such an opportunity—

(a) if the person attends before the Registrar personally or by an advocate or other agent, and is given such an opportunity; or

(b) if the person intimates, personally or by an advocate or other agent, that the person does not wish to be heard; or

(c) if the person 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, if the person attends before the Registrar, the person may be heard.

(2) If a person or an advocate or other agent on the person's behalf attends before the Registrar concerning a matter on which the person is entitled to be heard, or fails to attend pursuant to such a notice, the Registrar may, adjourn the hearing from time to time, and, notwithstanding failure to attend, may, hear that person at any time.

88. Prescribed fees

(1) The prescribed fees shall be payable in respect of a certificate of title, certificate 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.

(2) The Registrar shall not register a disposition of any land, lease or charge against which unpaid fees are recorded until such fees are paid and shall refuse to register a disposition or to issue a certificate of title or a certificate of lease if the fees payable to the Registrar under the Land Adjudication Act (Cap. 284) or the Land Consolidation Act (Cap. 283) are not recorded in the register as having been paid in full.

89. Recovery of fees and expenses

Unpaid fees or expenses incurred by the Registrar shall constitute a debt due and shall be a civil debt recoverable summarily.

90. Summary recovery

An order for the payment of a sum of money made by the Registrar under any power conferred by this Act shall be deemed to be a decree of the High Court and shall be enforceable as such.

Part IX – CO-TENANCY AND PARTITION

91. Meaning and incidents of co-tenancies

(1) In this Act, co-tenancy means the ownership of land by two or more persons and includes joint tenancy or tenancy in common.

(2) Except as otherwise provided in any written law, where the instrument of transfer of an interest of land to two or more persons does not specify the nature of their rights there shall be a presumption that they hold the interest as tenants in common in equal shares.

(3) An instrument made in favour of two or more persons and the registration giving effect to it shall show—

(a) whether those persons are joint tenants or tenants in common; and

(b) the share of each tenant, if they are tenants in common.

(4) If land is occupied jointly, no tenant is entitled to any separate share in the land and, consequently —

(a) dispositions may be made only by all the joint tenants;

(b) on the death of a joint tenant, that tenant's interest shall vest in the surviving tenant or tenants jointly; and

(c) each joint tenant may transfer their interest *inter vivos* to all the other tenants but to no other person, and any attempt to so transfer an interest to any other person shall be void.

(5) If any land, lease or charge is owned in common, each tenant shall be entitled to an undivided share in the whole and on the death of a tenant, the deceased's share shall be treated as part of their estate.

(6) No tenant in common shall deal with their undivided share in favour of any person other than another tenant in common, except with the consent in writing, of the remaining tenants, but such consent shall not be unreasonably withheld.

(7) Joint tenants, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joining ownership and the severance shall be complete by registration in the prescribed register of the joint tenants and tenants in common.

(8) The Registrar may upon receipt of adequate proof dispense with the consent under subsection (6) if the Registrar considers that the consent cannot be obtained or is being withheld unreasonably and the Registrar shall note on the register and on the instrument the reasons for dispensing with the consent.

(9) A person who is aggrieved by the decision of the Registrar may apply to the Court for the necessary orders.

[Act No. 28 of 2016, s. 29.]

92. Certificate of ownership of co-tenants

(1) Each co-tenant of land shall be entitled to receive a copy of the certificate of title of that land.

(2) The Registrar, on application by co-tenant in the prescribed form, shall issue a copy of the certificate of ownership to that co-tenant, with an endorsement signed by the Registrar that the copy has been issued to the co-tenant named in the endorsement.

(3) The Registrar shall note the issue of the copy of the certificate of ownership, in the register, and indicate the date of the issue of the copy and the co-tenant in whose name the copy has been issued.

Provided that a designated co-tenant shall be provided with the original title to the land.

[Act No. 28 of 2016, s. 30.]

93. Co-ownership and other relationships between spouses

Subject to any written law to the contrary, if a spouse obtains an interest in land during the subsistence of a marriage for the co-ownership and use of both spouses or all spouses, such property shall be deemed to be matrimonial property and shall be dealt with under the Matrimonial Property Act (Cap. 152).

[Act No. 28 of 2016, s. 31.]

94. Partition

(1) Any of the tenants in common may, with the consent of all the tenants in common, make an application, in the prescribed form, to the Registrar for the partition of land occupied in common and subject to the provisions of this Act and of any other written law applying to or requiring

consent to a sub-division of land and of any covenants or conditions in a certificate of title or certificate of lease, the Registrar shall effect the partition of the land in accordance with the agreement of the tenants in common.

(2) An application, may be made to the Registrar, in the prescribed form, for an order for the partition of land owned in common by—

(a) any one or more of the tenants in common without the consent of all the tenants in common; 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.

(3) The Registrar may, after hearing the applicant and any of the other tenants in common who wish to appear and be heard, make an order for the partition of land having regard to—

(a) whether the provisions of this Act, any other written law regulating the subdivision of land and any covenants and conditions in a land have been or will be complied with if the partition is effected;

(b) the nature and location of the land;

(c) the number of tenants in common and the extent of their respective shares particularly, the extent of the share of any tenant in common by whom or on whose behalf the application has been made;

(d) the value of any contribution made by any tenant in common to the cost of improvements to or the maintenance of the land or buildings occupied in common;

(e) where the tenants in common are spouses or the tenants in common who do not agree on the partition are dependants of or related to the tenants in common, whether the interests of those tenants in common who have not agreed to the partition have been or will be adequately provided for as a consequence of or after the partition is effected, and particularly, a spouse or dependants of the tenant in common who is applying for the partition will not be rendered homeless by the partition;

(f) in respect of an application made by a person referred to in subsection (2)(b), whether the interests of the spouse or any dependants of the tenant in common whose share is to be sold in execution of a judgment or decree, will be adequately catered for and particularly, any spouse or dependants will not be rendered homeless by the sale;

(g) if the tenants in common are pastoralists, whether the tenants in common who have not agreed to the partition will, after the partition, still retain grazing rights, including grazing rights created by an easement in the partitioned land, to sufficient land of the quality and nature and in the location customarily used by those pastoralists;

(h) the proper development and use of the land and whether it may be adversely affected by the partition applied for;

(i) the hardship that would be caused to the applicant or applicants by the refusal to an order in comparison with the hardship that would be caused to any other person by making the order; and

(j) any other matters that the Registrar considers relevant.

(4) The Registrar may make the order for partition subject to such limitations and conditions, including conditions relating to the payment of compensation to those tenants in common who have not agreed to the partition, by the tenants in common who have applied for the partition and how the expenses and costs of the partition are to be borne, as the Registrar may consider just and reasonable.

(5) Any co-tenant aggrieved by the decision of the Registrar may apply to the Court for a review of that decision.

[Act No. 28 of 2016, s. 32.]

95. Ancillary powers of Registrar in connection with partition

(1) If the land sought to be partitioned is capable of being partitioned generally, and the tenants in common have agreed on the partition, but the resultant share of any particular tenant would be less in acreage than the minimum prescribed under the Land Act, either generally or for the development or use of the land which that particular proprietor intends to undertake on that land, the tenants in common shall endeavour to reach a compromise on the matter, with or without the aid of mediation, and any party who is dissatisfied with that compromise or otherwise may refer that partition to the Registrar who shall—

(a) add that share to the share of any other tenant in common; or

(b) distribute that share amongst two or more other tenants in common in any proportion that, in default of agreement, the Registrar shall consider just and reasonable; and cause the value of the share added or distributed to be assessed and order that there be paid to the tenant in common of that share by each tenant in common who has received an addition to his or her share, the value of that addition.

(2) If any sum is payable under subsection (1)(b), the Registrar may order that sum be secured by way of a charge on the share of the tenant or tenants in common liable to pay that sum.

96. Sale of co-owned land

(1) If for any reason the land sought to be partitioned is incapable of being partitioned, or the partition would adversely affect the proper use of the land, and the applicant for partition or one or more of the other tenants in common require the land to be sold, and the tenants in common cannot agree on the terms and conditions of the sale or the application of the proceeds of the sale, the tenants in common may make an application to the court for an order for sale and the court may—

(a) cause a valuation of the land and of the shares of the tenants in common to be undertaken; and

(b) order the sale of the land or the separation and sale of the shares of the tenants in common by public auction or any other means which appears suitable to the court; or

(c) make any other order to dispose of the application which the court considers fair and reasonable,

(2) The court shall, in exercising its powers under paragraphs (b) and (c), have regard to any of the matters set out in section 94 (3)(a) to (f) that may be relevant in the circumstances.

(3) A tenant in common shall be entitled to purchase the land or any share of it that is offered for sale, either at an auction or at any time by private sale.

97. Partition subject to lender's consent

(1) If any undivided share in land or a lease held by tenants in common is subject to a charge, a partition of that land or lease shall not be registered by the Registrar unless the lender's written consent is produced to the Registrar.

(2) If a partition referred to in this section takes place with the consent of the lender, the land appropriated to the borrower shall, for all purposes, be deemed to be subject to the charge as if it had originally been comprised by it and the land appropriated to the other tenants in common shall be released from the charge.

Part X – CREATION OF EASEMENTS AND ANALOGOUS RIGHTS

98. Creation of easement

(1) An owner of land or a lessor may, by an instrument in the prescribed form, grant an easement over the land, lease or a part of that land to the owner of another parcel of land or a lessee for the benefit of that other parcel of land.

(2) The owner of land or a lessor referred to in subsection (1), who is transferring, assigning or leasing land or a lease may, in the transfer, assignment or lease, grant an easement for the benefit of the land transferred, assigned or leased over the land retained by him or her or reserve an easement for the benefit of land retained by him or her.

(3) An instrument creating an easement shall clearly specify—

(a) the nature of the easement and any conditions, limitations or restrictions subject to which it is granted;

(b) the period of time for which it is granted;

(c) the land, or the specific part of it burdened by the easement; and

(d) the land to benefit from the easement, and shall, required by the Registrar, include in a plan that sufficiently defines the easement.

(4) If a co-owner, by a disposition, severs any building or part of it or land separated by a common dividing wall or other structure, whether that wall or other structure is a party wall or other structure, cross-easements of support of the dividing wall or other structure in respect of the severed buildings or land and the owners of the severed buildings or land shall be implied in the disposition and their successors in title shall be entitled to the benefit subject to the burdens of the cross-easements.

(5) There shall be implied in every grant of an easement the grant of all ancillary rights which may be reasonably necessary for the full and effective enjoyment of the grant.

(6) A grant of an easement may contain an agreement between the owners of the dominant and servient lands binding either or both of them to pay for or contribute towards the cost of constructing, maintaining or re-pairing any way, wall, drainage, installation or work forming the subject matter of the easement.

(7) No easement and no right in the nature of an easement shall be capable of being acquired by any presumption of a grant from long and uninterrupted use.

(8) Nothing in this section shall prevent the lawful use of a right of way for persons and for stock acquired and that right of way shall be deemed to be property.

99. Cancellation and extinguishment of easements and analogous rights

(1) Subject to subsection (3), an easement granted or an analogous right created under this Part may be cancelled by the person occupying the dominant land.

(2) Any cancellation pursuant to subsection (1), shall be effected in the prescribed form and the easement, or analogous right shall be extinguished on the date that cancellation is recorded in the register.

(3) On the application of any person occupying servient land, the Registrar may cancel an easement or an analogous right if the Registrar is satisfied that—

(a) the period of time for which the easement or analogous right was intended to subsist has expired; or

(b) the event upon which the easement or analogous right was intended to terminate has occurred.

(4) The consent of any lessee or lender for the time being entitled to the benefit of any easement or analogous right shall be necessary for any cancellation of any such easements or analogous rights and such consent shall be signified in the prescribed form.

100. Enjoyment of easement and analogous rights

(1) The benefit of an easement, or an analogous right granted under this Part shall be enjoyed, during the term of its existence, by the owner of the dominant land, any successors in title and by—

(a) any lessee of the dominant land, or so far as the nature of the easement, or analogous right or part of it permits; and

(b) any lender on the security of a charge for the time being in possession of the dominant land, or so far as the nature of the easement or analogous right any part of it permit.

(2) Any person referred to in subsection (1)(a) or (b) who is by this section entitled to the benefit of an easement or analogous right may take out, in their own name, any proceedings necessary for the enforcement of the easement or the analogous rights.

Part XI – MISCELLANEOUS

101. Jurisdiction of court

The Environment and Land Court established by the Environment and Land Court Act (Cap. 8D) and subordinate courts has jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.

[Act No. 25 of 2015, Sch.]

102. Fees

(1) The Cabinet Secretary may prescribe the rates of fees payable for any matters in respect of which, by this Act, prescribed fees are required to be paid by any person and shall keep such fees under continuous review.

(2) Fees prescribed under this section shall be at a per centum rate of the value of the land that is, the subject of the application or other matter in respect of which fees are required to be paid.

(3) The Registrar shall refuse to make an entry on the register or register a document in respect of any grant of land or disposition arising in connection with land in respect of which a fee has not been paid in whole or in part, unless the Registrar is satisfied on the basis of written evidence that the fee has been waived in whole or in part.

(4) Unpaid fees or expenses incurred by the Government in connection with any attempt to recover those unpaid fees shall constitute a civil debt recoverable summarily.

[Act No. 28 of 2016, s. 33.]

103. Offences

(1) A person who—

(a) knowingly makes a false statement, orally or in writing, in connection with a disposition or other transaction affecting land or any other matter arising under this Act; or

(b) knowingly gives a false information or makes a false statement, either orally or in writing, in connection with a call for information made under this Act or in connection with a investigation into the commission of any offence under this Act;

(c) fraudulently procures—

(i) the registration or issue of any title or certificate of title or certificate of lease, or any other document or instrument relating to the land;

(ii) the making of an entry or the endorsement of a matter on a document or instrument referred to in subparagraph (i);

(iii) the cancellation or amendment of the documents, instruments, entries or endorsements referred to in this paragraph; or

(iv) a dealing or a transaction using any of the replaced register, certificate of title or certiticate of lease;

(d) fraudulently alters, adds to, erases, defaces, mutilates or destroys any document or instrument relating to land or any entry on or endorsement of any such document or instrument; suppresses or conceals from the Registrar, or any authorized officer exercising powers under this Act, or assist or joins in so doing, any material document, factor matter,

commits an offence and is liable on conviction to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(2) A person who unlawfully occupies land commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings, and in the case of a continuing offence to an additional fine not exceeding one hundred shillings for every day during which the offence continues.

[Act No. 28 of 2016, s. 34.]

Part XII – SAVINGS AND TRANSITION

104. Saving registers under repealed laws

(1) A register maintained under any of the repealed Acts shall, on the commencement of this Act, be deemed to be the land register for the corresponding registration unit established under this Act.

(2) Upon receiving an adjudication register from the Director of Land Adjudication, the Registrar shall forward it to the Deputy Registrar or Registrar in charge of the registration unit concerned, who shall prepare a register for each person shown in the adjudication record as an owner of land, and every person shown in the adjudication record as being entitled to an interest that does not amount to ownership of land shall be registered as being so entitled, subject, in every case to, any restriction of the power of the proprietor or of any person so entitled to deal with the land and to any interest, lease, right of occupation, charge or encumbrance affecting the land.

105. Transiting title documents

(1) On the effective date, the following provisions shall apply in respect of every parcel of land, the title to land which is already registered under the repealed Acts—

(a) if the title to a parcel of land is comprised in a grant or certificate of title registered under the repealed Registered Land Act—

(i) the grant or certificate of title shall be deemed to be a certificate of title or certificate of lease, as the case may be, issued under this Act; and

(ii) the folio of the register of titles kept under the repealed Act shall be deemed to be the register under this Act:

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 and substitute such register for such folio and issue to the proprietor a certificate of title or certificate of lease, as the case may be, in the prescribed form.

(b) if the title to the parcel is comprised in a grant or certificate of title registered under the repealed Registration of Titles Act—

(i) the grant or certificate of title shall be deemed to be a certificate of title or certificate of lease, as the case may be, issued under this Act; and

(ii) the folio of the register of titles kept under section 7 of the repealed Registration of Titles Act shall be deemed to be the register under this Act:

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 certificate of title or certificate of lease, as the case may be, in the prescribed form.

(c) in the case of an interest in land previously under the repealed Government Lands Act and the repealed Land Titles Act then—

(i) the register or folio maintained under the repealed Government Lands Act and the repealed Land Titles Act in respect of the interest in land shall be deemed to be the register under this Act;

(ii) the last conveyance or assignment noted in the register or folio maintained under the repealed Government Lands Act and the repealed Land Titles Act in respect of the interest in land shall be deemed to be evidence of ownership of the interest in land for purposes of issuing a certificate of title or a certificate of lease under this Act:

Provided that the Registrar may at any time prepare a register under this Act showing all subsisting particulars contained in the register or folio maintained under the repealed Government Lands Act and the repealed Land Titles Act and issue to the proprietor a certificate of title or a certificate of lease in the prescribed form.

(2) In compiling the land register, the Registrar shall—

(a) register the relevant public land in the name of the county or national government in trust for the people resident in the county or national government;

(b) comply the direction of the Commission as contained in any Gazette notice made under section 15 of the Land Act (Cap. 280); and

(c) include any special provisions relevant to the public land.

(3) Upon the registration of the Commission as proprietor of any land under subsection (2), there shall also vest in the Commission all rights, powers and liabilities under any grant or lease then subsisting in respect of the land.

[Act No. 28 of 2016, s. 35.]

106. Transitional provisions on rights, liabilities and remedies of parties over land

(1) On the effective date, the repealed Acts shall cease to apply to a parcel of land to which this Act applies.

(2) Nothing in this Act 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 that, immediately before the registration under this Act of the land affected, was registered under any of the repealed Acts.

(3) For the avoidance of doubt—

(a) any rights, liabilities and remedies shall be exercisable and enforceable in accordance with the law that was applicable to the parcel immediately before the registration of the land under this Act; and

(b) the 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 Act under which the memorandum was first registered.

(4) Notwithstanding this section, any notice in writing required to be served under the repealed Acts upon any of the parties under any mortgage, charge, memorandum of equitable mortgage or memorandum of charge by deposit of title may be served in accordance with this Act, and such service shall be deemed to be effective for all purposes.

107. Savings and transitional provisions with respect to rights, actions, dispositions

(1) Unless the contrary is specifically provided for in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall continue to be governed by the law applicable to it immediately prior to the commencement of this Act.

(2) Unless the contrary is specifically provided for in this Act or the circumstances are such that the contrary must be presumed to be the case, where any step has been taken to create, acquire, assign, transfer, or otherwise execute a disposition, any such transaction shall be continued in accordance with the law applicable to it immediately prior to the commencement of this Act.

(3) For the avoidance of doubt, any lease granted to a noncitizen shall not exceed ninety-nine years.

(4) An instrument executed before the commencement of this Act whereby any disposition permitted under this Act is completed may be presented for registration in the prescribed register and—

(a) the question whether any instrument so presented is to be registered shall be determined by the Registrar by reference to the law in force at the time of its execution; and

(b) subject to the provisions of paragraph (a), the provisions of this Act shall apply to that instrument as if it had been executed after the commencement of this Act.

(5) If any step has been taken to forfeit a lease or to foreclose a charge before the effective date, a court may, if it considers it just and reasonable so to do, on and after the effective date, on the application of the lessee or, as the case may be, the borrower to issue an injunction to the lessor or, as the case may be, the borrower to issue an injunction to the lessor or, as the case may be, the lender to stop the continuation of any such step and where a court has issued an injunction under this subsection, the lessor or lender to whom the injunction has been issued may commence any action under this Act to terminate that lease or bring that charge to an end.

108. Saving and transitional provisions with respect to rules, orders, e.t.c.

Until the Cabinet Secretary makes the regulations contemplated under section 110, any rules, or other administrative acts made, given, issued or undertaken before the commencement of this Act under any of the Acts of Parliament repealed by this Act or any other law, shall continue in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring them into conformity with this Act.

Part XIII – MISCELLANEOUS PROVISIONS

General

109. Repeals

The written laws set out in the Schedule are repealed.

110. Regulations

(1) The Cabinet Secretary shall make regulations prescribing anything which may be prescribed under this Act generally and for the better carrying into effect the purposes and provisions of this Act and without prejudice to the generality of the foregoing, such regulations may prescribe—

(a) the forms to be used in connection with this Act;

(b) the manner and form of the registries of land, the procedures to be followed by the registries and hours they are to be open for business;

(c) procedures for the transfer of land from one category to another;

(d) particulars and format to be contained in a register or other document required to be kept under this Act; and

(e) any other matter for the better carrying into effect of the provisions of this Act.

(2) In making the regulations, rules or prescribing any matters required under this Act, the Cabinet Secretary shall take into account the advice of the Commission as required under the Constitution and such regulations or rules shall be tabled before Parliament for approval.

SCHEDULE

REPEALED LAWS

[Section 109.]

The Indian Transfer of Property Act, 1882

The Government Lands Act (Cap. 280)

The Registration of Titles Act (Cap. 281)

The Land Titles Act (Cap. 282)

The Registered Land Act (Cap. 300)