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LAND REGISTRATION BILL, 2011

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A Bill for

AN ACT of Parliament to give effect to Article 68 of the Constitution; to revise, consolidate and rationalize the law governing the registration of title to land, to regulate dealings in registered land, and for connected purposes.

ENACTED by the Parliament of Kenya as follows

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Land Registration Act, 2011.

Interpretation.

2. In this Act unless the context otherwise requires—
“adjudication officer” and “adjudication register” have the meanings assigned to “Adjudication Officer” and “Adjudication Register” in the Land Adjudication Act;
“assignee” means a person to whom an assignment is made;
“borrower” means a person who obtains an advance of money or money’s worth or agrees to the fulfillment of a condition on the security of a charge of the person’s land or lease;
“building” means any structure or erection of any kind whatsoever whether permanent or temporary, whether movable or immovable and whether completed or uncompleted;
“Cabinet Secretary” means the Cabinet Secretary in the State Department responsible for land matters;

“cadastral map” means the map or series of maps referred to in Section 14;

“caution” means a notice in the form of any entry on a register 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. For the purposes of this Act, a caution includes a caveat.

“Certificate of lease” means a certificate of lease in the prescribed form issued under section 29;

“Certificate of title” means a certificate of title in the prescribed form issued under section 29;

“charge” means an interest in a land or a lease securing the payment of money or money's worth or the fulfillment of a condition and includes a sub-charge and the instrument creating a charge. For the purposes of this Act, a charge includes a mortgage;

“Court” means the Court established under Article 162 2 (b) of the Constitution;

“co-tenancy” has the meaning ascribed to it by section 91 of this Act;

“dealing” includes disposition and transmission;

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

“disposition” means any sale, charge, transfer, grant, partition, exchange, lease, assignment, surrender, or disclaimer and includes the disclaimer and includes the creation of an easement, a usufructuary right, or other servitude or any other interest in a land or a lease and any other act by an owner of a land or under a lease whereby the person's rights over that land or lease are affected and an agreement to undertake any of the dispositions so defined;

“dwelling house” means any house or part of a house or room used as a separate dwelling in any building and includes any garden or other premises within the cartilage of and used as a part of the dwelling house as so defined;

“*lease*” has the meaning ascribed to it by the Land Act;

“*effective date*” means the commencement date of this Act;

“*file*” means place in the relative parcel file;

“*geothermal energy*” and “*geothermal energy resources*” have the same meanings as they have in the Energy Act;

“*head lease*” means a lease in respect of which a sublease is entered into;

“*inhibition*” means an interest registered under the Land Act, and includes a prohibition;

“*instrument*” means a writing, including an enactment which creates or affects legal or equitable rights and liabilities and includes any covenant or condition expressed in an instrument or implied in a instrument under this or any other enactment relating to land and, except where otherwise provided, any variation of an instrument;

“*interest*” means a right in or over a land;

“*land*” has the meaning assigned to in Article 260 of the Constitution;

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

“*land register*” means the land register compiled under Part II of this Act;

“*lease*” means a lease or sublease, whether registered or unregistered of a land and includes a short-term lease and agreement to lease;

“*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 and includes 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*” means the person occupying land under and in accordance with the

terms of a license;

"licensor" means the person granting or giving the license;

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

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

"partition" means the separation by formal legal instrument of the share in a land or a lease held by owners in common so that each such owner takes his or her shares 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” means all private land as defined by Article 64 of the Constitution; “proprietor” means

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

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

“public land” means all public land as defined by Article 62 of the Constitution;

"public purposes" means the construction of roads, railway lines, dams, water reservoirs, bridges, sea ports, airports, cities, research institutions, security installations, public buildings, or such other prescribed facility.

" valuer" means a registered or practising valuer recognized under an Act of Parliament for the registration of valuers;

“Registrar” means

(a) the Registrar of Titles or the Deputy Registrar of Titles, appointed

under section 11; or

- (b) where a Deputy Registrar of Titles or an Assistant Registrar of Titles has been authorized under section 11 (4) to exercise or perform any particular power or duty, that Deputy Land Registrar or Assistant Land Registrar so far as concerns that power or duty;

"registration district" means a land registration district constituted under section 6 (3);

"registration section" means a division of a registration district established under section 14 (3);

"registry" means a land registry established under section 15 (1);

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

"restrictive agreement" means an agreement by one owner of land under a land restricting the building on or the use or other enjoyment of his or her land for the benefit of the owner under a land or neighbouring land and includes a restrictive covenant; "surveyor" has the meaning assigned to it under the law relating to surveys;

"transfer" means the passing of land, a lease or a charge from one party to another by act of the parties and not by operation of the law and includes the instrument by which such passing is effected;

"transferee" means a person who receives the land, lease or charge passed by an act of transfer;

"transferor" means the person who passes the land lease or charge by an act of transfer;

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

"trustee" includes personal representative;

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

"unexhausted improvement" means anything or any quality permanently attached to the land directly resulting from the expenditure of capital or labour by an owner or any person acting on his or her behalf and increasing the productive capacity, the utility, the sustainability of its environmental quality and includes trees, standing crops and growing produce whether of an agricultural or horticultural nature;

Application

3. Subject to section 4, this Act shall apply to—

- (a) registration of interests to all public land as declared by Article 62 of the Constitution;
- (b) registration of interests to all private land as declared by Article 64 of the Constitution; and
- (c) registration of interests in land in any area of community land to which the Cabinet Secretary shall by order apply.

Limitation of application

4. This Act does not—

- (a) apply to the registration of rights over public land in respect of minerals, petroleum, geothermal energy or geothermal energy resources; and
- (b) prevent or otherwise affect the system of registration under any law relating to mining, petroleum or geothermal energy or rights in respect of public land.

Conflict with other laws

5. Except as otherwise provided in this Act, no other written law and no 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

Registration districts

- 6.** (1) For the purposes of this Act, the Cabinet Secretary may, by order, constitute an area or areas of land a land registration district or land registration districts and may at any time vary the limits of any such district
- (2) Any order by the Cabinet Secretary under this section shall be published in the gazette and at least two newspapers of wide circulation in the country.
- (3) The land registration districts shall be established at such places to ensure reasonable access of land administration and registration services to the people of Kenya.

Land registers

- 7.** (1) There shall be maintained in each registration district a land registry, in which there shall be kept
- (a) a land register, in the form to be determined by the Cabinet Secretary in consultation with the Commission with this Act;
 - (b) the cadastral map;
 - (c) parcel files containing the instruments which support subsisting entries in the land register and any cadastral plans and documents which must be geo-referenced;
 - (d) a book, to be known as the presentation book, in which shall be kept a record of all applications numbered consecutively in the order in which they are presented to the registry;
 - (e) an index, in alphabetical order, of the names of the proprietors.
 - (f) a register and a file of powers of attorney.
- (2) The Registrar shall make information in the land registers easily accessible to every citizen, including the National Land Commission.

Maintenance of documents

- 8.** (1) The Registrar may maintain the register and any other document required to be kept under this Act in a secure, accessible and reliable format including

- (a) publication, 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) electronic register.

(2) The register shall contain the following particulars

- (a) name and address of the proprietor;
- (b) name and address of the previous proprietors;
- (c) size, location and reference number of the parcel;
- (d) any other particulars as the Registrar may from time to time determine.

(3) The Registrar shall maintain a backup record of all documents and ensure that documents are stored in a secure, reliable and retrievable form.

(4) For the purpose of ensuring accuracy of the records, the Registrar may correct information in a document kept or issued in accordance with this Act.

Inclusion of information in register not to constitute notice or knowledge

9. The inclusion of information in the register does not constitute

- (a) express, constructive or implied notice of the information to any person; or
- (b) express, constructive or implied knowledge of the information on the part of any person.

Public access to the register

10. (1) The Registrar shall make information in the register accessible to the public by electronic means and on conditions satisfactory to the Registrar.

(2) The Registrar may suspend one or more of the services provided in relation to the register if the Registrar is satisfied that circumstances are such that it is not practicable to provide those services.

- (3) The Registrar may restrict access to designated information in the register.
- (4) For the purposes of subsection (3), the Registrar may
 - (a) designate information in the register;
 - (b) define classes of persons or designated information; or
 - (c) make different restrictions for different classes of persons or designated information.

Appointment of officers

- 11.** (1) The Public Service Commission shall appoint a Registrar of Titles, who shall be responsible for administering the land registries in accordance with this Act.
- (2) The Public Service Commission shall appoint Deputy Registrars of Titles and so many Assistant Registrars of Titles as may be necessary for carrying out the provisions of this Act.
- (3) The Deputy Registrar of Titles shall have all the powers and may perform all or any of the duties conferred and imposed on the Registrar of Titles by this Act or by any rules made thereunder, except the power of authorization conferred by subsection (4).
- (4) The Registrar of Titles may in writing authorize an Assistant Registrar of Titles to exercise or to perform all or any of the powers or duties conferred on the Registrar of Titles by this Act and may at any time revoke or vary any such authorization:
- Provided that no such authorization shall be deemed to divest the Registrar of Titles of any of the powers.
- (5) The Registrar may deploy Deputy Registrar of Titles and an Assistant Registrar of Titles to such registration districts as circumstances may require.

General powers of the Registrar of Titles

- 12.** The Registrar of Titles may exercise any of the following powers in addition to the powers conferred on the office 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 respecting land, a lease or a charge, or an instrument certificate or other 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) administer oaths or take declarations 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.

Seal of Registrar

- 13.** Each registrar 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 of Titles.

Maps, Parcels And Boundaries

Cadastral map

- 14.** (1) The statutory body responsible for survey shall prepare and thereafter maintain a map or series of maps, to be called the cadastral map, for every registration district.
- (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.

- (3) The cadastral map of every registration district shall be divided into registration sections, which shall be identified by distinctive names, and the registration sections may be further divided into blocks, which shall be given distinctive numbers or letters or combinations of numbers and letters.
- (4) The parcels in each registration section or block shall be numbered consecutively, and the name of the registration section and the number and letter of the block, if any, and the number of the parcel shall together be a sufficient reference to any parcel.
- (5) The body responsible for land surveys 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 Titles of the changes.

Power to alter boundary lines
and to prepare new editions

- 15.** (1) The statutory body responsible for land surveys shall correct the line or position of any boundary shown on the cadastral map, but such correction shall not be effected except on the instructions of the Registrar of Titles in writing in the prescribed form, and done in accordance with any Act for the time being in force respecting subdivisions of land.
- (2) Whenever the boundary of a parcel is altered on the registry map, the parcel number shall be cancelled and the parcel shall be given a new number.
- (3) The statutory body responsible for land surveys may prepare new editions of the cadastral map or any part thereof, and may omit from the new map any matter which it considers obsolete.

Approval for further surveys

- 16.** (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 body responsible for land surveys.

- (2) This section does not preclude Registrar from keeping in the registry records of cadastral information and maps approved by a statutory body responsible for survey.

Boundaries

- 17. (1) Except where, under section 18, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any cadastral plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.
- (2) No court shall entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this section.
- (3) Except where, as aforesaid, it is noted in the register that the boundaries of a parcel have been fixed, the court or the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary:

Provided that where all the boundaries are defined under sub section 18 (3), sections 15, 16 and 17 the determination of the position of any uncertain boundary shall henceforth be done as stipulated in the Survey Act.

Fixed boundaries

- 18. (1) If the Registrar of Titles considers it desirable to indicate on a field plan approved by a statutory body responsible for survey, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if any interested person makes application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.
- (2) The Registrar of Titles shall, after giving all persons appearing by the register to be affected an opportunity of being heard, cause to be defined by survey the precise position of the boundaries in question, file a plan

containing the necessary particulars and make a note in the register that the boundaries have been fixed, and thereupon the plan shall be deemed to define accurately the boundaries of the parcel.

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

Maintenance of boundaries

- 19.** (1) Every proprietor of land shall maintain in good order the fences, hedges, stones, pillars, walls and other features which demarcate the boundaries, pursuant to the requirements of any law.
- (2) The Registrar may in writing order the demarcation within a specified time of any boundary in a permanent manner, and any person who fails to comply with such an order shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings.
- (3) The Registrar of Titles may in writing order which of adjoining proprietors shall be responsible for the care and maintenance of any feature demarcating a common boundary, and any proprietor so ordered to be responsible who allows the boundary feature or any part of it to fall into disrepair or to be destroyed or removed shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings.

Interference with boundary features

- 20.** (1) Any person who defaces, removes, injures or otherwise impairs any boundary feature or any part of it unless authorized to do so by the Registrar shall be guilty of an offence and liable to imprisonment for a term not exceeding two months or to a fine not exceeding two thousand shillings or to both.
- (2) Any person convicted of an offence under subsection (1), whether or not any penalty therefore is imposed upon him or her, shall be liable to pay the

cost of restoring the boundary feature, and the cost shall be recoverable as a civil debt by any person responsible under this section for the maintenance of the feature.

Combinations and subdivisions

- 21.** (1) Where contiguous parcels are owned by the same proprietor and are subject in all respects to the same rights and obligations, the Registrar, on application by the proprietor, may combine these parcels by closing the registers relating to them and opening a new register or registers in respect of the parcel or parcels resulting from the combination.
- (2) Upon the application of the proprietor of a parcel for the sub-division of his or her parcel into two or more parcels, the Registrar shall effect the division based on an approved sub-division plan 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 which would be inconsistent with the provisions of this Act or any other written law.

Reparcellation

- 22.** (1) The Registrar of Titles may, on the application of the proprietors of contiguous parcels who are desirous of changing the layout of their parcels, and with the consent in writing of all other persons in whose names any right or interest in the parcels is registered and of any cautioner, cancel the registers relating to those parcels and prepare new registers in accordance with the new edition of the cadastral map :

Provided that, where in the opinion of the Registrar a proposed reparcellation involves substantial changes of ownership which should be effected by transfers without invoking this section, the Registrar may refuse to effect the reparcellation and direct the proprietors accordingly.

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

Effect of Registration

Interest conferred by registration

- 23.** Subject to this Actô

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

Rights of a proprietor

- 24.** 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 subjectô

- (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- (b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 27 not to require noting on the register:

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

Certificate of title to held as conclusive evidence of proprietorship

- 25.** (1) The certificate of title issued by the Registrar of Titles upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as *prima facie* evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, exceptô
- (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 Registrar's seal of office, shall be received in evidence in the same manner as the original.

Voluntary transfer

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

effect as a transfer for valuable consideration.

Overriding interests

27. Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register—
- (a) rights of way, rights of water and profits subsisting at the time of first registration under this Act;
 - (b) natural rights of light, air, water and support;
 - (c) rights of compulsory acquisition, resumption, entry, search and user conferred by any other written law;
 - (d) leases or agreements for leases for a term not exceeding two years, periodic tenancies and indeterminate tenancies;
 - (e) 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;
 - (f) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;
 - (g) the rights of a person in possession or actual occupation of land to which the person is entitled in right only of such possession or occupation, save where inquiry is made of such person and the rights are not disclosed;
 - (h) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law;
 - (i) environmental easements as provided by any written law; and
 - (j) Such other rights as provided by any written law.

Actual notice

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

Certificate of Titles, Certificates of Lease and Searches

Certificate of title and
Certificate of lease

- 29.** (1) The Registrar of Titles may, if requested by a proprietor of land 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:

Provided thatô

- (a) only one certificate of title or certificate of lease shall be issued in respect of each parcel of land or lease;
 - (b) no certificate of title or certificate of lease shall be issued unless the lease is for a certain period exceeding twenty-five years.
- (2) A certificate of title or certificate of lease shall be only prima facie evidence of the matters shown therein, and the land or lease shall be subject to all entries in the register.
- (3) When there is more than one proprietor, the proprietors shall agree among themselves as to who shall receive the certificate of title or the certificate of lease, and failing agreement the certificate of title or the certificate of lease shall be filed in the registry.
- (4) The date of issue of a certificate of title or certificate of lease shall be noted in the register.

Production of certificate

- 30.** (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 shows all

subsisting entries in the register, a note of the registration shall be made on the certificate of title or the certificate.

- (2) If the disposition is a transfer, the certificate if produced shall be cancelled, and in that case a new certificate may be issued to the new proprietor.
- (3) If the disposition is a charge, the certificate shall be delivered to the chargee.

Dispositions of leases and charges

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

Lost or destroyed certificates

- 32.**
- (1) If a certificate of title or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issue of a new certificate of title or certificate, and shall produce evidence to satisfy the Registrar of Titles of the loss or destruction of the previous certificate of title or certificate of lease.
 - (2) The Registrar of Titles shall require a statutory declaration to be made by all the registered proprietors, or where a company; the director, or where a charge; the chargee that the certificate of title or a certificate of lease has been lost or destroyed.
 - (3) The Registrar of Titles, if satisfied with the evidence as to 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 having a nation-wide circulation, may issue a new certificate of title or certificate of lease upon the expiry of 60 days from the date of such *gazettement* and circulation of such newspapers; whichever is first.
 - (4) When a lost certificate of title or certificate of lease is found, it shall be delivered to the Registrar for cancellation.

Searches and copies

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

Evidence

- 34.** (1) Every document purporting to be signed by a Registrar of Titles shall, in all proceedings, be presumed to have been so signed until the contrary is proved.
- (2) Every copy of or extract from a document certified by the Registrar of Titles 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 which 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

Dispositions and dealings affecting private land

- 35.** (1) A lease, charge or interest in private land shall not be capable of being disposed of or dealt with except in accordance with this Act, and any attempt to dispose of any lease, charge or interest in private land otherwise than in accordance with this Act, shall be ineffectual to create, 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 shall prescribe terms and conditions of sale which shall apply to contracts by correspondence, subject to any modification or any stipulation or any intention to the contrary which is expressed in the correspondence, and which may be made to apply to any other cases for which the terms and conditions are made available, where express reference is made to those terms and conditions.
- (4) The Cabinet Secretary shall make regulations prescribing the time within which instruments presented for registration must be registered and providing for the supervision of the registration process to achieve the objectives of efficiency, transparency and good governance.

Transfer

- 36.** (1) A proprietor may transfer his or her land, lease or charge to any person with or without consideration, by an instrument in the prescribed form.
- (2) The transfer shall be completed by registration of the transferee as proprietor of the land, lease or charge and by filing the instrument.

Certificates as to payment
of rates

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

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

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

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- Certificates as to payment of rent **38.** (1) The Registrar shall not register any instrument purporting to transfer or create any interest in land, unless a certificate is produced to him or her certifying that no rent is owing to the Commission in respect of the land, or that the land is freehold.
- (2) The Registrar shall refuse to register an instrument effecting a controlled transaction unless he is satisfied that any consent required to be obtained in respect of the transaction has been given by the Land Control Board, or that no consent is required.
- (3) If the Registrar contravenes subsection (2) in relation to a share, he shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.
- Transfer to take effect immediately **39.** 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.
- Conditions repugnant to interest transferred **40.** (1) Any condition or limitation purporting to restrain absolutely a transferee or any person claiming under him or her from disposing of the interest transferred is void.
- (2) Any condition or limitation made in relation to a transfer which purports to determine the interest of the transferee on the happening of any future event or on the failure of any future event to happen is void.
- (3) Except as 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.
- (4) This section does not apply to Wakfs.
- Transfer of part **41.** No part of the land comprised in a register shall be transferred unless the proprietor has first subdivided the land and new registers have been opened in

respect of each subdivision.

Instruments of dispositions

- 42.** (1) Every instrument effecting any disposition of land under this part shall use any of the prescribed forms which is specified in relation to that disposition under this Act or any other law.
- (2) No instrument effecting any disposition of private land under this Act shall operate to sell or assign a land or create, transfer or otherwise affect any land, lease, 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 dispositions exempt from registration.
- (4) This section shall not apply to or affect the operation of any contract for a disposition under this Act.

Executions of instruments in writing

- 43.** (1) Every instrument effecting any disposition under this Act shall, subject to the provisions of this Act, be executed in accordance with the provisions of this section by each of the parties consenting to it.
- (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 thumbprint or other mark which shall evidence of personal acceptance of that instrument.
- (3) The execution of any instrument referred to in subsection (1) by a corporate body, an association, a co-operative society or any other like organization shall be effected in the presence of either an advocate of the High Court of Kenya, a magistrate, a Judge or a notary public.
- (4) An instrument executed out of Kenya shall not be registered unless it has endorsed thereon or attached thereto a certificate in the prescribed form completed

- (a) if the instrument was executed in the Commonwealth, by a judge, magistrate, justice of the peace, notary public, commissioner of prisons, commissioner for oaths or administrative officer; or
 - (b) if the instrument was executed in a foreign country, by such other person or class of persons as the Cabinet Secretary may prescribe.
- (5) Every transfer executed under this Act shall be affixed with passport-size photographs and the identity card, passport, driving license or such other identification documents as the Cabinet Secretary may be prescribe.

Verification of execution

- 44.** (1) Subject to subsection (3), a person executing an instrument shall appear before the Registrar or such public officer or other person as is prescribed and, unless the person is known to the Registrar or the public officer or other person, shall be accompanied by a credible witness for the purpose of establishing his or her identity.
- (2) The Registrar or public officer or other person shall identify the person appearing before him or her 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 can be obtained only with difficulty and becomes otherwise satisfied that the document has been properly executed; or
 - (b) in cases in which to the Registrar's knowledge the document has been properly executed,
- and shall record on the document his or her reasons for dispensing with the appearance of the parties.

Stamping

- 45.** An instrument required by law to be stamped shall not be accepted for registration unless it is duly stamped.

Minors

- 46.** (1) For the avoidance of doubt, it is declared that the name of a person under the age of eighteen years may be entered in the register to be held in trust and registered under the name of the guardian either on first registration or as a transferee or on transmission.
- (2) Nothing in this section enables any such person to deal with land or any interest in land by virtue of such registration, and, where to his or her knowledge a minor is registered, the Registrar shall enter a restriction accordingly.
- (3) Where a disposition by a minor whose minority has not been disclosed to the Registrar has been registered that disposition may not be set aside only on the grounds of minority

Agents and persons under disability

- 47.** (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 sections 43.
- (2) The original of such power of attorney or, with the consent of the Registrar, a copy thereof certified by the Registrar shall be filed.
- (3) Where any person who, if not under a person with disability, might have made any application, done any act or been a party to any proceeding under this Act or under any rules made thereunder is a minor, a person of unsound mind or a person under any other disability, the guardian of such person, or if there is no such guardian a person appointed under some written law to represent that person, may make any application, do any act and be party to any proceeding on behalf of that person, and shall generally represent that person for the purposes of this Act.
- (4) Before accepting any document executed by a guardian or a person so appointed to represent a person under a disability, the Registrar shall satisfy himself or herself that the person claiming to be the guardian is entitled to

execute the document or require the production of the appointment of the person so appointed, and shall file a note of the explanation to that effect.

Gift to person under disability 48.

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

- (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 to Prejudice Creditor

Purpose of this Part

49. The purpose of sections 50 to 52 is to enable a court to 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 but no order referred to in this section has effect so as to increase or prejudice the value of any security held by a creditor over the interest in land of the debtor.

Prejudicial dispositions

50. (1) A disposition under this Act shall be taken to prejudice a creditor if it 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 and that person is unable to pay all his or her debts without recourse to that private land or any interest in it.

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

Dispositions to prejudice
creditors may be set aside

- 51.**
- (1) A creditor, and any public officer, Government department or parastatal body charged with the responsibility for collection of money owing to the Government or any part of it by any person may apply to the court under this section for an order by 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; 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) A court may, subject to section 53 on being satisfied that an applicant has been prejudiced by a disposition to which this sub-part applies make an order
 - (a) directing 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;
 - (iii) to take any other action which the court may specify;
 - (b) direct the debtor who made the prejudicial disposition
 - (i) to hold the land restored to him or her through the re-assignment of a land or derivative right under sub-paragraph (ii) of paragraph (a) of subsection (3) as a trustee for his or her

creditors; and

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

Protection of person
receiving land **52.**

- (1) Where a person acquires or receives land in respect of which a court could make an order for a restoration or 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 be taken to include actual, constructive and imputed knowledge.

PART IV—LEASES

Registration of Leases

53.

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

Provided that the Registrar may, upon receipt of adequate proof, dispense with the consent of the lessor

- (a) if 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 be obtained only with difficulty or at unreasonable expense and shall, after making such enquiries as the Registrar may deem necessary in the circumstances, record on the document his or her reasons for dispensing with the consent and note such dispensation in the register.

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

(3) The Registrar shall not register long term leases over apartments, flats, maisonettes, town houses or offices having the effect of conferring ownership, unless the property comprised therein shall have been properly geo-referenced and approved by the statutory body responsible for survey.

Lessor's consent to dealing
with leases **54.**

(1) A lease which comes into operation on or after the date on which this Part of this Act comes into operation which provides for its termination or permits notice of its termination to be given on the occurrence of a future event is not invalid by reason only of that fact if the event is sufficiently defined in the lease so as to be identified when it occurs.

(2) Where a lease contains a condition, express or implied, by the lessee that lessee will 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, no dealing with the lease shall be registered until 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 land, unless a land rent clearance certificate and the consent to the lease is produced to him or her certifying that no rent is owing to the Commission in respect of the land, or that the land is freehold.

Future leases

- 55.** (1) A lease of a land may be made for a term to begin on a future date, not being later than twenty one years from the date on which the lease is executed.
- (2) A future lease, which is expressed to be for a period of more than five years, shall be of no effect unless and until it is, registered under the Land Registration Act.

PART V—CHARGES

Form and effect of Charges

- 56.** (1) A proprietor may, by an instrument in the Form and prescribed form, charge his or her land or lease to secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfillment of a condition, and the instrument shall, except where charges remedies have been by instrument, expressly excluded, contain a special acknowledgement that the chargor understands the effect of that section, and the acknowledgement shall be signed by the chargor or, where the chargor is a corporation, by one of the persons attesting the affixation of the common seal.
- (2) A date for the repayment of the money secured by a charge may be specified in the charge instrument, and where no such date is specified or repayment is not demanded by the chargee on the date specified the money shall be deemed to be repayable three months after the service of a demand in writing by the chargee.
- (3) The charge shall be completed by its registration as an encumbrance and the registration of the person in whose favour it is created as its proprietor and by filing the instrument. The Registrar shall not register the charge, unless a land rent clearance certificate and the consent to charge is produced to him or her certifying that no rent is owing to the Commission in respect of the land, or that

the land is freehold.

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

(5) There shall be included, in an instrument of charge securing the 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 chargee, of the money which may arise on the exercise by the chargee of his or her 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.

Second and subsequent charge 57.

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 thereto, but any sale under the power expressed or implied in any such charge shall be expressed to be subject to all prior charges unless all those charges have been discharged. However, where a second or subsequent charge is created, and where the lender is different from the 1st lender, then the 1st lender's consent must be obtained.

Statutory charge 58.

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

Lender's consent to transfer 59.

Where a charge contains a condition, express or implied by the borrower that the borrower will not, without the consent of the lender transfer or 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 for the lender has been produced to the Registrar.

PART VI—TRANSMISSIONS AND TRUSTS

- Transmission on death of joint proprietor **60.** If one of two or more joint proprietors of any land, lease or charge dies, the Registrar, on proof of the death, shall delete the name of the deceased from the register.
- Transmission on death of a sole proprietor or proprietor in common **61.** (1) If a sole proprietor or a proprietor in common dies, the proprietor's personal representative, on application to the Registrar in the prescribed form and on production to the Registrar of the grant, shall be entitled to be registered by transmission as proprietor in the place of the deceased with the addition after his or her 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 production of a grant, the Registrar may, without requiring the personal representative to be registered, register by transmission—
- (a) any transfer by the personal representative; 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.
- Effect of transmission on death **62.** (1) Subject to any restriction on a person's power of disposing of the land, lease or charge contained in his or her appointment, the personal representative or the person beneficially entitled on the death of the deceased proprietor, as the case may be, shall hold the land, lease or charge subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the deceased proprietor held the same, but for the purpose of any dealing the person shall be deemed to have been registered

as proprietor thereof 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 any person as aforesaid shall relate back to and take effect from the date of the death of the proprietor.

Transmission on bankruptcy

- 63.** (1) A trustee in bankruptcy shall, upon production to the Registrar of a certified copy of the order of court adjudging a proprietor bankrupt, or directing that the estate of a deceased proprietor shall be administered according to the law of bankruptcy, be registered as proprietor of any land, lease or charge of which the bankrupt or deceased proprietor is proprietor, in his or her place, and a copy of the order shall be filed.
- (2) A trustee in bankruptcy shall be described in the register as trustee of the property of, a bankrupt.
- (3) The trustee in bankruptcy shall hold any land, lease or charge of which the trustee is registered as proprietor subject to any restrictions contained in the Bankruptcy Act or in any order of court and subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the bankrupt or the deceased proprietor held the same, but for the purpose of any dealing with such land, lease or charge the trustee in bankruptcy shall have all the rights and be subject to all the limitations conferred or imposed by this or any other written law on a proprietor who has acquired land, a lease or a charge for valuable consideration.

Liquidation

- 64.** (1) Where a company is being wound up, the liquidator shall
- (a) produce to the Registrar any resolution or order appointing him or her liquidator; and
 - (b) satisfy the Registrar that the person has complied with section 237 of the Companies Act,
- and the Registrar shall enter the appointment in respect of any land, lease or

charge of which the company is registered as proprietor, and shall file the copy of the resolution or order.

(2) An instrument executed by or on behalf of a company in liquidation delivered for registration after the appointment of the liquidator has been entered under subsection (1) shall be sealed with the common seal of the company and attested by the liquidator or, in the case of a company not required by law to have a common seal, shall be signed by the liquidator whose signature shall be verified in accordance with section 43.

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

Transmission in other cases

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

Trusts not to be entered

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

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

(3) Where the proprietor of land, a lease or a charge is a trustee, the proprietor shall hold the same subject to any unregistered liabilities, rights or interests to which it is subject by virtue of the instrument creating the trust, but for

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

Survivor of trustees

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

PART VII—RESTRAINTS ON DISPOSITION

Inhibitions

Power of the court to inhibit registered dealings

- 68.** (1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until further order, the registration of any dealing with any land, lease or charge.
- (2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected thereby, shall be sent to the Registrar, who shall register it in the appropriate register, and no inhibition shall bind or affect the land, lease or charge until it has been registered.

Effect of inhibition

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

Cancellation of inhibition

- 70.** The registration of an inhibition shall be cancelled in the following cases and in no others—
- (a) on the expiration of the time limited by the inhibition; or
- (b) on proof to the satisfaction of the Registrar of the occurrence of the event named in the inhibition; or
- (c) on the land, lease or charge being sold by a chargee, unless such sale is itself inhibited; or

(d) by order of the court.

Cautions

Lodging of cautions

- 71.** (1) Any person who—
- (a) claims the right, whether contractual or otherwise, to obtain an interest in any land, lease or charge, that is to say, some defined interest capable of creation by an instrument registrable under this Act; or
 - (b) is entitled to a licence; or
 - (c) has presented a bankruptcy petition against the proprietor of any registered land, lease or charge,
- may lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the same.
- (2) A caution may either—
- (a) forbid the registration of dispositions and the making of entries altogether; or
 - (b) forbid the registration of dispositions and the making of entries to the extent therein expressed.
- (3) A caution shall be in the prescribed form, and the Registrar may require the cautioner to support it by a statutory declaration.
- (4) The Registrar may reject a caution which 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.

- Notice and effect of caution
- 72.** (1) The Registrar shall give notice in writing of a caution to the proprietor whose land, lease or charge is affected by it.
- (2) So long as a caution remains registered, no disposition which is inconsistent with it shall be registered except with the consent of the cautioner or by order of the court.
- Withdrawal and removal of caution
- 73.** (1) A caution may be withdrawn by the lodger or removed by order of the court or, subject to subsection (2), by order of the Registrar.
- (2) The Registrar may, on the application of any person interested, serve notice on the cautioner warning the cautioner that caution will be removed at the expiration of the time stated in the notice.
- (3) If at the expiration of the time stated the cautioner has not objected, 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 his or her objection within the time specified in the notice, and the Registrar, after giving the parties an opportunity of being heard, shall make such order as Registrar thinks fit, and may in the order make provision for the payment of costs.
- (5) On registration of a transfer by a chargee in exercise of the chargee's power of sale under section XX of the Land Act, the Registrar shall after the expiry of thirty days remove any caution which purports to prohibit any dealing by the chargor and which was registered after the charge by virtue of which the transfer has been effected.
- (6) On the withdrawal or removal of a caution, its registration shall be cancelled, but any liability of the cautioner previously incurred under section 75 shall not be affected by the cancellation.
- Second caution in respect of the same matter
- 74.** The Registrar may refuse to accept a further caution by the same person or anyone on his or her behalf in relation to the same matter as a previous caution.

Wrongful cautions

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

Restrictions

Restrictions

76. (1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar thinks 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 the making of a further order,

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

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

Notice and effect of restriction

77. (1) The Registrar shall give notice in writing of a restriction to the proprietor affected thereby.
- (2) So long as any restriction remains registered, no instrument which is inconsistent with it shall be registered except by order of the court or of the Registrar.

Removal and variation of restrictions 78.

- (1) The Registrar may at any time, upon application by any person interested or of his or her own motion, and after giving the parties affected thereby an opportunity of being heard, order the removal or variation of a restriction.
- (2) Upon the application of any proprietor affected by a restriction, and upon notice thereof to the Registrar, the court may order a restriction to be removed or varied, or make such other order as it thinks fit, and may make an order as to costs.

PART VIII—RECTIFICATION AND INDEMNITY

Rectification by Registrar 79.

- (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 or omissions not materially affecting the interests of any proprietor;
 - (b) in any case and at any time with the consent of all persons interested; or
 - (c) where upon resurvey, a dimension or area shown in the register is found to be incorrect, but in such case the Registrar shall first give notice to all persons appearing by the register to be interested or affected of his or her intention so to rectify.
- (2) Upon proof of the change of the name or address of any proprietor, the Registrar shall, on the written application of the proprietor, make an entry in the register to record the change.

Rectification by Court 80.

- (1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake.
- (2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable

consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his or her act, neglect or default.

- Right to indemnity **81.** (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 be indemnified by the Government out of Funds provided by Parliament.
- (2) No indemnity shall be payable under this Act to any person who has caused or substantially contributed to the damage by his or her fraud or negligence, or who derives title (otherwise than under a registered disposition made bona fide for valuable consideration) from a person who so caused or substantially contributed to the damage.
- Amount of indemnity **82.** Where an indemnity is awarded in respect of the loss of any interest in land, it shall not exceed
- (a) where the register is not rectified, the value of the interest at the time when the mistake or omission which caused the damage was made; or
 - (b) where the register is rectified, the value of the interest immediately before the time of rectification.
- Procedure for claiming indemnity **83.** The Court may, on the application of any interested party, determine whether a right of indemnity has arisen under this Part and, if so, award indemnity, and may add thereto any costs and expenses properly incurred in relation to the matter.

- Recovery of indemnity paid **84.** Where any Funds are paid by way of indemnity under this Part, the Cabinet Secretary is entitled to recover by suit or otherwise the amount so paid from any person who has caused or substantially contributed to the loss by his or her fraud or negligence, and to enforce any express or implied agreement or other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which the indemnity has been paid.
- Errors in survey **85.** (1) As between the Government and a proprietor, no claim to indemnity shall arise and no suit shall be maintained on account of any surplus or deficiency in the area or measurement of any land disclosed by a survey showing an area or measurement differing from the area or measurement disclosed on any subsequent survey or from the area or measurement shown in the register or on the 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
- Appeals over the decision of the Registrar **86.** (1) Whenever any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on the Registrar of Titles 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 thereon, which shall be binding upon the parties.
- (2) The Rules Committee shall make rules on the procedures to be followed by the Registrar of Titles or an aggrieved person under subsection (1).
- Meaning of opportunity of being heard **87.** (1) Where by this Act a thing is to be or may be done after giving a person an opportunity of being heard, that person shall be deemed to have been given

such an opportunity

- (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, be heard.

(2) Where 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 an opportunity of being heard, or fails to attend pursuant to such a notice as aforesaid, the Registrar may, adjourn the hearing from time to time, and, notwithstanding failure to attend, may, hear such person at any time.

Prescribed fees

- 88.** (1) The prescribed fees shall be payable in respect of certificate of title, certificates of lease, searches, survey plans, printed forms and all other matters connected with registration, and the Registrar may refuse registration until the fees are paid.
- (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 of Titles under the Land Adjudication Act or the Land Consolidation Act are not recorded in the register as having been paid in full.

Recovery of fees and expenses

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

Summary recovery

90. 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

Meaning and incidents of
co-tenancies **91.**

- (1) In this Act, co-tenancy means the ownership of land by two or more undivided shares and may be either joint tenancy or tenancy in common.
- (2) Where, subject to the provisions of this Act, two or more persons not forming an association of persons under this Act or any other way which specifies the nature and content of the rights of the persons forming that association own land together under a right specified by this section, they may be either joint tenants or tenants in common.
- (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) where they are tenants in common, the share of each tenant.
- (4) Where the land is occupied jointly under a land or lease 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, his or her interest shall vest in the surviving tenant or tenants jointly; or
 - (c) a joint tenant may transfer his or her interest *inter vivos* to all the other tenants but to no other person, and any attempt to so transfer his or her interest to any other person shall be void.
- (5) Where 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, his or her share shall be treated as part of his or her 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 or in any other manner which signifies clearly that the consent is given freely and without undue pressure, 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) On and after the commencement of this Act, and except with leave of a court, the only joint tenancy that shall be capable of being created shall be between spouses, and any joint tenancy other than that between spouses which is purported to be created without the leave of a court shall take effect as an tenancy in common.

Certificate of ownership of co-tenants **92.**

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

(2) The Registrar shall, on application by co-tenant in the prescribed form, 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 make a note in the register of the issue of the copy of the certificate of ownership, showing the date of the issue of the copy and the co-tenant in whose name the copy has been issued.

Co-ownership and other relationships between spouses **93.**

(1) Where a spouse obtains land for the co-ownership and use of both spouses or where there is more than one wife, all spouses, there shall be a presumption that, unless a provision in the certificate of ownership or certificate of customary ownership clearly states that one spouse is taking the land in his or her name only or that the spouses are taking the land as tenants in common, the spouses will hold the land as tenants in common and, unless the presumption is rebutted in the manner stated in this subsection, the Registrar shall register the

spouses as tenants in common.

(2) Where land is held in the name of one spouse only but the other spouse or spouses contribute by their labour to the productivity, upkeep and improvement of the land, that spouse or those spouses shall be deemed by virtue of that labour to have acquired an interest in that land in the nature of an ownership in common of that land with the spouse in whose name the certificate of ownership or customary certificate of ownership has been registered.

(3) Where a spouse who holds land or a dwelling house for a land in his or her name alone undertakes a disposition of that land or dwelling house, thenô

(a) where that disposition is a charge, the lender shall be under a duty to make inquiries of the borrower as to whether the spouse or spouses has or as the case may be, have consented to if that charge;

(b) where that disposition is an assignment or a transfer of land, the assignee or transferee shall be under a duty to make inquiries of the assignor or transferor as to whether the spouse or spouses have consented to that assignment; or

(c) where the aforesaid spouse undertaking the disposition deliberately misleads the lender or, as the case may be, the assignee or transferee as to the answers to the inquiries made in accordance with paragraphs (a) and (b), the disposition shall be voidable at the option of the spouse or spouses who have not consented to the disposition.

Partition

94. (1) An application in the prescribed form to the Registrar for the partition of land occupied in common may be made by any one or more of the tenants in common with the consent of all the tenants 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 a land, the Registrar shall effect the partition of the land in accordance with the agreement of the tenants in common.

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- (2) An application in the prescribed form to the Registrar for an order for a partition of land owned in common may be made 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 a 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 shares in particular, 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 those tenants in common who do not agree to the partition are dependants of or related to those tenants in common whether the interests of those tenants in common who have not agreed to the partition will be or have been adequately provided for as a consequence of or after the partition is effected, and in particular, a spouse or dependants of the tenant in common applying for partition will not be rendered homeless by such partition;
 - (f) in respect of an application made by a person referred to in paragraph (b) of subsection (2); 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 decree, will be adequately catered for and in particular, any spouse or dependants will not be rendered homeless by the sale;

- (g) where the tenants in common are pastoralists, whether those 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 a refusal of an order in comparison with the hardship that would be caused to any other person by the making of the order; and
- (j) any other matters that the Registrar considers relevant,

and may make that order subject to such limitations and conditions, including conditions as to the payment of compensation to those tenants in common who have not agreed to the partition by those 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 considers just reasonable.

Ancillary powers of Registrar in connection with partition **95.**

- (1) Where the land sought to be partitioned is capable of partition generally, and the tenants in common have reached an agreement on the partition, but the resultant share of any particular tenant would be less in area than the minimum prescribed by this 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 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 which, in default of agreement, the Registrar shall think 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) Where any sum is payable under the provisions of paragraph (b) of subsection (1), 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.

Sale of co-owned land

- 96.** (1) Where for any reason the land sought to be partitioned is incapable of partition, or the partition would adversely affect the proper use of the land, and the applicant for partition or one or more of the other tenants in common require that the land be sold, then if the tenants in common cannot agree on the terms and conditions of the sale or the application of the proceeds of the sale, an application may be made 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 made; 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 to the court to be suitable; or
 - (c) make any other order to dispose of the application which the court considers fair and reasonable,

and in exercising its powers under paragraphs (b) and (c), the court shall have regard to any of the matters set out in paragraphs (a) to (f) of subsection (3) of section xx which seems to it to be relevant in the circumstances.

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

Partition to subject charge

- 97.**
- (1) Where any undivided share in land or for a lease by tenants in common is subject to a charge, no partition of that land or lease shall be entertained by or accepted for registration by the Registrar unless the consent in writing of the lender is produced to the Registrar.
 - (2) Where a partition referred to in this section takes place with the consent of the lender, the land appropriated to the borrower shall be deemed to be subject to the charge for all purposes as if it had originally been comprised in it and the land appropriated to the other tenants in common shall be released from the charge.

PART X—CREATION OF EASEMENTS AND ANALOGOUS RIGHT

Creation of easement

- 98.**
- (1) An owner of land or a lessor may, by an instrument in the prescribed form, grant an easement over the land comprised in the land or lease or a part of any that land to the owner under a land or a lessee of other land for the benefit of that other land.
 - (2) Any owner referred to in subsection (1) or any lessor 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 them.
 - (3) An instrument creating an easement shall specify clearly
 - (a) the nature of the easement and any conditions limitations, and restrictions subject to which it is granted;
 - (b) the period of time for which it is granted;
 - (c) the land, or the particular part of it burdened by the easement; and

- (d) the land benefited by the easement, and shall, if so required by the Registrar, include a plan sufficient to define the easement.
- (4) where a co-owner, by any disposition, severs any building or part of it or any land separated by common dividing wall or other structure then, whether that wall or other structure is a party wall or other structure, there shall be implied in the disposition 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 and their successors in title shall be entitled to the benefit and 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 it.
- (6) Any 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, drain, or other 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 user.

Nothing in this section shall be taken to 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.

Cancellation and extinguishment of easements and analogous rights **99.**

- (1) Subject to subsection (3), any easement granted under this part or any analogous right created under this part may be cancelled by the person occupying the dominant land.
- (2) Any cancellation referred to in subsection (1) shall be effected by the

prescribed form and the easement, or analogous right shall be extinguished on the date that form is recorded in the register.

- (3) On the application of any person occupying servient land under a land, the Registrar may cancel any easement or an analogous right where the Registrar is satisfied that
 - (a) the period of time for which the easement or analogous right was intended to subsist had 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 rights and such consent shall be signified in the prescribed form.

Enjoyment of easement and
analogous rights

- 100.**
- (1) The benefit of an easement, and an analogous right granted under this part shall, during the term of its existence, be enjoyed by the owner of the dominant land and his or her successors in title and by
 - (a) any lessee of the dominant land, or so far as the nature of the easement, or analogous right permit, and part of it, 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 permit, any part of it.
 - (2) Any person referred to in paragraphs (a) and (b) of subsection (1) who is by this section entitled to the benefit of an easement or analogous right may take in his or her own name any proceedings necessary to enforce that easement or those analogous rights.

PART XI—MISCELLANEOUS

Jurisdiction of Land and Environment Court

101. Subject to the Constitution and this Act, the Environment and Land Court established in the Environment and Land Court Act is vested with exclusive jurisdiction to hear and determine all manner of disputes, actions and proceedings concerning land under this Act.

Fees

- 102.**
- (1) The Cabinet Secretary shall prescribe the rates of fees for all 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 rate per centum rate of the value of the land 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 any entry on the register or register any document in respect of any grant of a land or any disposition of or arising in connection with a 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 produced before him or her that that fee has been waived in whole or in part or that it has been agreed between the payer and payee that fee may be paid in installments and there are no arrears in those installments.
 - (4) Unpaid fees or expenses incurred by the Government in connection with any attempt to recover those unpaid fees shall constitute civil debt recoverable summarily.

Offences

- 103.**
- (1) Any person who
 - (a) knowingly makes any false statement, orally or in writing, in connection with any disposition or other transaction affecting land or any other matter arising under this Act, or
 - (b) knowingly gives any false information or makes any false statement, either orally or in writing, in connection with any call for information made under this Act or in connection with any investigation into the commission of any offence under this Act;

(c) fraudulently procures

- (i) the registration or issue of any certificate of ownership, or any other document or instrument relating to the land;
- (ii) the making of any entry or the endorsement of any matter on any document or instrument referred to in subparagraph (i); or
- (iii) the cancellation or amendment of any of the documents referred to in this paragraph instruments our entries or endorsements;

(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, any authorized officer exercising powers under this Act or assist or joins in so doing, any material document, fact or matter,

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

- (2) Any person who unlawfully occupies public land commits an offence and upon conviction is liable to a fine not exceeding ten thousand shillings, and in the case of a continuing offence to an additional fine not exceeding five hundred shillings for every day during which the offence shall have continued.

Savings and Transition

Saving Registers under repealed laws

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

- (2) Upon receiving an adjudication register from the Director of Land Adjudication, the Registrar of Titles shall forward it to the Deputy Registrar of Titles or Assistant Registrar of Titles in charge of the district 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 which 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.

Transiting title documents.

105. (1) Upon coming into operation of this Act, the following provisions shall apply in respect of every parcel of land, the title to which is already registered under the repealed Acts,

(a) if the title to the parcel 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 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.

(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) if the title to the parcel is comprised in a register kept under the repealed Government Lands Act or the repealed Land Titles Act, the Registrar shall

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

- (ii) prepare a register in the prescribed form showing all subsisting particulars affecting the parcel which are capable of registration under this Act;

- (iii) serve on the proprietor and on the proprietor of any lease or charge a notice of intention to register; and

- (iv) issue to the proprietor, upon request, a certificate of title or certificate of lease in the prescribed form;

- (2) In compiling the land register, the Registrar of Titles shall register

- (a) the Commission as the proprietor of all public land in the area; and

- (b) subject to the Land Adjudication Act and the Land Consolidation Act, the Commission as the proprietor of all trust land and community land in the area, subject in each case to any grant or lease affecting the land.

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.

Special transitional of rights, liabilities and remedies of parties over land

- 106.** (1) On the commencement 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 which, immediately before the registration under this Act of the land affected thereby, 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 which 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.

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.

Savings and transitional provisions with respect to rights, actions, dispositions etc

- 107.** (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) Any 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 Act shall apply to that instrument as if it had been executed after the commencement of this Act.
- (4) Where any step has been taken to forfeit a lease or to foreclose a charge before the enactment of this Act, a court may, if it considers it just and reasonable so to do, on and after the commencement of this Act, 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.

Saving and transitional provisions with respect to rules, orders etc

108. Any rule, order, regulation, direction, notice, form, notification or other administrative act made, given, issued or undertaken before the commencement of this Act under any law repealed if it could have been made, given, issued or undertaken under any corresponding provision of this Act, continue in force and have the like effect as if it had been so made, given, issued or, as the case may be, undertaken.

General

Repeals

109. The written laws set out in the Schedule herein are hereby repealed.

Regulations.

110. (1) The Cabinet Secretary may, make regulations prescribing anything which may be prescribed under this Act and generally for the better carrying into effect of 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.

Act to bind government

111. This Act shall bind the Government.

**SCHEDULE
(Under Section 109)**

REPEALED ACTS

1. The Indian Transfer of Property Act 1882
2. Distress for Rent Act, Chapter 302 of the Laws of Kenya
3. Registered Land Act, Chapter 300 Laws of Kenya
4. The Registration of Titles Act, Chapter 281 of the Laws of Kenya
5. Government Lands Act, Chapter 280 Laws of Kenya
6. Land Titles Act, Chapter 282 Laws of Kenya