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TWELFTH PARLIAMENT – SECOND SESSION – 2018

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE CONSIDERATION OF STATUTE LAW (MISCELLANEOUS
AMENDMENTS) BILL, 2018

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2018

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1. Advert for submission of Memoranda;
2. Minutes of the Committee proceedings on the Bill.
3. Memoranda from stakeholders.

List of Abbreviations

COG	-	Council of Governors
CS	-	Cabinet Secretary
NLC	-	National Land Commission

CHAIRPERSON'S FOREWORD

The Statute Law (Miscellaneous Amendments) Bill, 2018 seeks to make various amendments to several statutes including the Land Act No. 6 of 2012 and the Land Registration Act No. 3 of 2012. The Bill was read a First Time on 18th April, 2018 and thereafter it was subjected to the provisions of Article 118 of the Constitution and Standing Order 127 of the National Assembly Standing Orders on public participation. The Committee received various views from the Ministry of Land and Physical Planning, and written memoranda from the National Land Commission, the Council of Governors, the Judiciary, the Kenya Magistrates and Judges Association and Transparency International Kenya.

The Committee appreciates the support accorded to the Committee in discussing the Bill by the office of the Clerk and also the participation of the Honourable Members of the Committee. This report represents an analysis of the Bill, submissions made to the Committee by different stakeholders, observations and recommendations of the Committee on the Bill

Hon. Dr. Rachael Kaki Nyamai, MP
Chairperson, Departmental Committee on Lands

1.0 PREFACE

1.1 Mandate of the Committee

The Departmental Committee on Lands is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference:-

- (i) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- (ii) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- (iii) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- (iv) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- (v) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister.
- (vi) study and review all legislation referred to it

1.2 Committee subjects

The Committee is mandated to consider the following subjects:-

- a) Land Policy,
- b) Physical Planning,
- c) Land Transactions,
- d) Survey and Mapping
- e) Land Adjudication
- f) Settlement
- g) Land registration
- h) Land Valuation
- i) Administration of Private, community and Public Land
- j) Land Information and Management System

1.3 Oversight

The Committee oversights:

- i. The Ministry of Lands and Physical Planning ;and
- ii. The National Land Commission.

1.4 Committee Membership

Chairperson	The Hon. Dr. Rachael Nyamai, MP
Vice Chairperson	The Hon. Khatib Mwashetani, MP
	The Hon. Jayne Njeri Wanjiru Kihara, MP
	The Hon Joshua Kutuny Serem, MP
	The Hon. Kimani Ngunjiri, MP
	The Hon. Mishi Mboko, MP
	The Hon. Omar Mwinyi, MP
	The Hon. Ali Mbogo, MP
	The Hon. Babu Owino, MP
	The Hon. Caleb Kipkemei Kositany, MP
	The Hon. Catherine Waruguru, MP
	The Hon George Aladwa, MP
	The Hon George Risa Sunkuyia,MP
	The Hon. Jane Wanjuki Njiru,MP
	The Hon. Josphat Gichunge Mwirabua Kabeabea, MP
	The Hon. Owen Yaa Baya, MP
	The Hon. Samuel Kinuthia Gachobe, MP
	The Hon. Simon Nganga Kingara, MP
	The Hon Teddy Mwambire, MP

Committee Secretariat

Clerk Assistant I	Mr. Leonard Machira
Clerk Assistant III	Mr. Ahmad Guliye
Legal Counsel I	Ms. Jemimah Waigwa
Researcher III	Mr. Joseph Tiyan
Fiscal Analyst III	Ms. Lucy Makara
Audio Officer	Mr. John Mungai
Media Relations Officer	Ms. Winnie Kizziah

1.5 Committee observations

Having considered the Bill and the memoranda submitted to the Committee by the public, the Committee observed and made comments as follows-

1. The proposed amendment to section 2 of the Land Act No. 6 of 2012 which seeks to redefine the term "Court" to include the High Court established under Article 165 of the Constitution contravenes the provisions of Article 165(5)(b) of the Constitution which provides that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162(2) of the Constitution which are the Environment and Land Court established under Article 162(2) of the Constitution.
2. The proposed amendment to section 23 of the Lands Act No. 6 of 2012 seeks to provide for issuance of lease or licence for private land by the Cabinet Secretary and registered by the Chief Land Registrar.
3. Pursuant to Article 67(2)(g) of the Constitution the NLC is mandated to assess tax on land and not collect rent hence necessitating the need to delete sections 28, 29 and 30 which deal with collection of rent and unpaid rent under any lease or licence.
4. There is also need to amend sections 31, 32, 33, 34, 35 and 36 of the Land Act to among things align the sections with amendments already made to sections 28, 29 and 3 of the Land Act in respect of collection of rent on leases and licenses.
5. The proposed amendment to section 2 of the Land Registration Act No. 3 of 2012 which seeks to redefine the term "Court" to include the High Court established under Article 165 of the Constitution contravenes the provisions of Article 165(5)(b) of the Constitution which provides that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162(2) of the Constitution which are the Environment and Land Court established under Article 162(2) of the Constitution.

1.6 Committee recommendation

Having analyzed the Bill vis-à-vis the memoranda submitted by the public, the Committee recommends that the proposed amendments to the Lands Act No. 6 of 2012 and the Land Registration Act No. 3 of 2012 be approved and subject to the proposed amendments in this Report.

2.0 INTRODUCTION

The Statute Law (Miscellaneous Amendments) Bill, 2018 seeks to make various amendments to several statutes including the Land Act No. 6 of 2012 and the Land Registration Act No. 3 of 2012. The Bill was read a First Time on 18 April, 2018 and thereafter it was subjected to the provisions of Article 118 of the Constitution and Standing Order 127 of the National Assembly Standing Orders on public participation. The Committee received various views from the Ministry of Land and Physical Planning, and written memoranda from the National Land Commission, the Council of Governors, the Judiciary, the Kenya Magistrates and Judges Association and Transparency International Kenya.

2.1 analysis of the Bill

The Bill contains proposed amendments to-

(1) The Lands Act No. 6 of 2012.

The Bill proposes to amend section 2 of the Land Act to redefine the term Court to include the High Court established under Article 165 of the Constitution. The Bill also proposes to amend section 23 of the Lands Act to provide that a lease or licence for private land shall be issued by the Cabinet Secretary and registered by the Chief Land Registrar. The Bill also proposes to delete sections 28, 29 and 30 of the Land Act so to align the Act with Article 67(2)(g) which defines the role of NLC as being to assess tax on land and not to collect tax as envisaged in sections 28, 29 and 30 of the Act.

(2) The Land Registration Act No. 3 of 2012

The Bill proposes to amend section 2 of the Land Registration Act to redefine the term Court to include the High Court established under Article 165 of the Constitution.

3.0 SUBMISSIONS AND PUBLIC PARTICIPATION

Pursuant to Article 118 of the Constitution and Standing Order 127 of the National Assembly Standing Orders on public participation, the Committee received various views from the Ministry of Land and Physical Planning, and written memoranda from the National Land Commission, the Council of Governors, the Judiciary, the Kenya Magistrates and Judges Association and Transparency International Kenya.

The stakeholders made the following written and oral submissions among others-

Act being amended	Section being amended.	Proposed amendments	Stakeholders submissions
Lands Act, 2012	“Court” means the Environment and Land Court established by the Environment and Land Court Act, 2011 (No. 19 of 2011), and other courts having jurisdiction on matters relating to land.	“Court” means the High Court established by Article 165 of the Constitution and the Environment and Land Court established under the Environment and Land Court Act, 2011.	Judiciary: Delete the amendment as it violates Article 162(2) of the Constitution and the Supreme Court adjudicated on the jurisdiction of the ELC in Petition No. 5 of 2015 (R versus Karisa Chengo and 2 others. Kenya Magistrates and Judges Association: Delete the amendment as it violates Article 162(2) of the Constitution and the Supreme Court adjudicated on the jurisdiction of the ELC in Petition No. 5 of 2015 (R versus Karisa Chengo and 2 others. NLC: The amendment contravenes Article 162(2) and 165(5)(b). TI Kenya: The Act was silent on private land since it had provided for issuance of licenses and leases for public land which are within the ambit of the
	Implied covenants and conditions by or lessor 23.(1) In every lease relating to public land, unless the lease expressly provides otherwise, there is an implied covenant by the lessor—	Amend by inserting a new subsection to read- (3) A lease or licence for private land within the meaning of Article	

(a)that the lessor has full power to the land or lease; and

(b)that the lessee, paying the rent and fulfilling the conditions of the lease, shall enjoy quiet possession of the premises without interruption by the lessor or any person claiming under the lessor, except so far as the laws for the time being in force may permit.

(2)A lease or licence for public land shall be issued by the Commission and shall be registered by the Chief Lands Registrar.

64(b) of the Constitution shall be issued by the Cabinet Secretary and registered by the Chief Land Registrar

NLC.

This will cure the infighting between NLC and the CS for lands.

COG: Land leased remains public land and the management should be by NLC on behalf of county governments or national government. The section should therefore be deleted.

NLC: Contravenes Article 40 of the Constitution as a lease on private land can only be issued by the owner of land as provided for in section 56.

Ministry of Lands: The amendment creates clarity to whose responsibility it is to issue lease or licence on private land. There is however need to delete sub-section (2) of section 23 as the Constitution does not confer upon NLC the responsibility of issuing leases on public land.

Rents and other payments

28(1)The rent, royalties and payments reserved under any lease or licence shall be a debt owed to the Commission, and shall be paid by the lessee or licensee at the office of the Commission or at such other place as the Commission may prescribe.

Delete section 28

COG: Land rates and rents are levies are payable to the county governments. If section 28 is deleted there will be a vacuum in the principal Act as there will be no body in charge of collection or rent.

(2)The annual rent reserved under any lease or licence shall be payable in advance on the first day of January in each year of the term.

(3)The payments made under subsection (2) shall be accounted for to the respective governments.

Section should not be deleted but aligned with the Constitution to read:

28(1) The rent, royalties and payments reserved under any lease or licence shall be a debt owed to the County Government, and shall be paid by the lessee or licensee to the County Government.

(3)The payments made under subsection (2) shall be accounted for to the County Government.

NLC: Deletion without an alternative framework for the same will leave a vacuum and deny both the county and national government of revenue.

Ministry of Lands: Aligns the Act with Article 67(2)(g) which defines the role of NLC as being to assess tax and not to collect tax as envisaged in sections 28 of the Act.

Unpaid rents and other payments
29(1) If any funds due in respect of any rent, principal instalment, royalty or other payment (in this section referred to as "the principal debt") under any agreement lease or license under this Act, or under any Act repealed by this Act, remain unpaid after the due date, a late payment interest at the rate of two percent per month or part thereof, or at such other rate as may from time to time be specified by the Commission in the Gazette, shall

Delete section 29

COG: Section 28 of the Act improperly expands the mandate of NLC and makes it a collector contrary to the Constitution.

Amend to read-

29(1) If any funds due in respect of any rent, principal instalment, royalty or other payment (in this section referred to as "the principal debt") under any

be charged on the amount remaining unpaid for more than one month after the due date until the full amount is recovered.

(2) Any payment made under subsection (1) shall first be attributed to the payment of outstanding interest and thereafter only when such interest has been paid in full shall any payment be attributed to the reduction of the principal debt.

(3) If any interest becomes payable under subsection (1) the Commission shall serve on the debtor a notice demanding payment of that interest in addition to the other money then due.

(4) Notwithstanding the foregoing provisions of this section, the Commission may waive the whole or part of any late payment of interest provided for by this section, if the debtor has provided the Commission a good and sufficient reason for the late payment.

(5) The Commission shall publish and publicize annually, any remission or waiver made under subsection (4).

(6) Notwithstanding the provisions of this section, the law relating to public financial management shall apply.

agreement lease or license under this Act, or under any Act repealed by this Act, remain unpaid after the due date, a late payment interest at the rate of two percent per month or part thereof, or at such other rate as may from time to time be specified by the County Government, shall be charged on the amount remaining unpaid for more than one month after the due date until the full amount is recovered.

(3) If any interest becomes payable under subsection (1) the County Government shall serve on the debtor a notice demanding payment of that interest in addition to the other money then due.

(4) Notwithstanding the foregoing provisions of this section, the County Government may waive the whole or part of any late payment of interest provided for by this section, if the debtor has provided the Commission a good and sufficient reason for the late payment.

(5) The County Government shall publish and publicize annually, any remission or waiver made under subsection (4).

Commission may sue for rent, etc., in arrears
30. Without prejudice to the Commission's right to recover a debt in any other way, the Commission may sue in Court for any rent, principal, instalment, royalty or other payment, payable under any agreement, lease or license under this Act, that is in arrears, or for any penalty payable under section 29.

Delete section 30.

NLC: Deletion without an alternative framework for the same will leave a vacuum and deny both the county and national government of revenue.

Ministry of Lands: Aligns the Act with Article 67(2)(g) of the Constitution which defines the role of NLC as being to assess tax and not to collect tax as envisaged in sections 29 of the Act.

COG: Amend section 30 to read-
County Government may sue for rent, etc., in arrears

30. Without prejudice to the Counties right to recover a debt in any other way, the County Government may sue in Court for any rent, principal, instalment, royalty or other payment, payable under any agreement, lease or license under this Act, that is in arrears, or for any penalty payable under section 29.

NLC: Deletion without an alternative framework for the same will leave a vacuum and deny both the county and national government of revenue.

Ministry of Lands: Aligns the Act with Article 67(2)(g) of the

Constitution which defines the role of NLC as being to assess tax and not to collect tax as envisaged in sections 30 of the Act. There is also need to amend sections 31, 32, 33, 34, 35 and 36 to align the sections with amendments made to sections 28, 29 and 30.

Land
Registration
Act, 2012

“Court” means the Environment and Land Court established by the Environment and Land Court Act, 2011 (No. 19 of 2011), and other courts having jurisdiction on matters relating to land;

Insert the words “the High Court established by Article 165 of the Constitution” immediately before the expression and the Environment and Land Court” appearing in the definition of the term “Court”.

Judiciary: Delete the amendment as it violates Article 162(2) of the Constitution and the Supreme Court adjudicated on the jurisdiction of the ELC in Petition No. 5 of 2015 (R versus Karisa Chengo and 2 others).

Kenya Magistrates and Judges Association: Delete the amendment as it violates Article 162(2) of the Constitution and the Supreme Court adjudicated on the jurisdiction of the ELC in Petition No. 5 of 2015 (R versus Karisa Chengo and 2 others).

NLC: The amendment contravenes Article 162(2) and 165(5)(b) of the Constitution.

1.7 CONSIDERATION OF THE BILL

The Committee deliberated on the Bill as follows:

LAND ACT, 2012

Proposed amendment to section 2	Proposed amendment
Proposed amendment to section 23	Proposed amendment
Proposed amendment to section 28	Agreed to
Proposed amendment to section 29	Agreed to
Proposed amendment to section 30	Agreed to

LAND REGISTRATION ACT, 2012

Proposed amendment to section 2	Proposed amendment
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4.0 GENERAL OBSERVATIONS

The Committee made the following observations and comments on the Bill:

1. The proposed amendment to section 2 of the Land Act No. 6 of 2012 which seeks to redefine the term “Court” to include the High Court established under Article 165 of the Constitution contravenes the provisions of Article 165(5)(b) of the Constitution which provides that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162(2) of the Constitution which are the Environment and Land Court established under Article 162(2) of the Constitution.
2. The proposed amendment to section 23 of the Lands Act No, 6 of 2012 seeks to provide for issuance of lease or licence for private land by the Cabinet Secretary and registered by the Chief Land Registrar.
- ~~3. Pursuant to Article 67(2)(g) of the Constitution the NLC is mandated to assess tax on land and not collect rent hence necessitating the need to delete sections 28, 29 and 30 which deals with collection of rent and unpaid rent under any lease or licence.~~
4. There is also need to amend sections 31, 32, 33, 34, 35 and 36 of the Land Act to among things align the sections with amendments made to sections 28, 29 and 3 of the Land Act in respect of collection of rent on leases and licenses.
5. The proposed amendment to section 2 of the Land Registration Act No. 3 of 2012 which seeks to redefine the term “Court” to include the High Court established under Article 165 of the Constitution contravenes the provisions of Article 165(5)(b) of the Constitution which provides that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162(2) of the Constitution which are the Environment and Land Court established under Article 162(2) of the Constitution.

5.0 COMMITTEE RECOMMENDATION

Having analyzed the Bill vis-à-vis the memoranda submitted by the public, the Committee recommends the Bill be approved and passed by the House subject to the proposed amendments in this Report.

6.0 PROPOSED AMENDMENTS

The Committee made the following proposed amendments to the Bill—

LAND ACT NO. 6 OF 2012

THAT the proposed amendment to section 2 of the Land Act be deleted.

Justification

The amendment contravenes the provisions of Article 165(5)(b) of the Constitution which provides that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162(2) of the Constitution which are the Environment and Land Court established under Article 162(2) of the Constitution.

THAT the proposed amendment to section 23 of the Land Act be deleted and substituted therefor the following new amendment—

s. 23 Delete sub-section (2) and substitute therefor the following new sub-section—

(2) A lease or licence for private land within the meaning of Article 64(b) of the Constitution shall be issued by the Cabinet Secretary and registered by the Chief Land Registrar.

Justification

The proposed amendment to section 23 of the Lands Act No, 6 of 2012 seeks to provide for issuance of lease or licence for private land by the Cabinet Secretary and registered by the Chief Land Registrar.

THAT the Bill be amended by inserting the following new proposed amendments immediately after the proposed amendment to section 30 of the Land Act—

s. 31(1) Delete the word “Commission” and substitute therefor the word “Chief Land Registrar”.

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- s. 31(3) Delete the word “ Commission” and substitute therefor the word “Chief Land Registrar”.
- s. 32(1) Delete the word “ Commission” and substitute therefor the word “Chief Land Registrar”.
- s. 33 Delete the word “ Commission” and substitute therefor the word “Chief Land Registrar”.
- s. 34(1) Delete the word “Commission” wherever it appears and substitute therefor the word “Chief Land Registrar”.

Delete the word “public” wherever it appears.

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- s. 34(2) Delete the word “ Commission” and substitute therefor the word “Chief Land Registrar”.
- s. 34(3) Delete the word “ Commission” and substitute therefor the word “Chief Land Registrar”.
- Delete the word “public” wherever it appears.
- s. 34(4) Delete the word “ Commission” and substitute therefor the word “Chief Land Registrar”.
- s. 34(5) Delete the word “public”.
- s. 35 Delete the word “Commission” wherever it appears and substitute therefor the word “Chief Land Registrar”.
- Delete the word “public”.
- s. 36(1) Delete the word “public” wherever it appears.

Justification

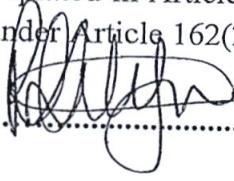
The amendments to sections 31, 32, 33, 34, 35 and 36 are necessary to align the sections with amendments already made to sections 28, 29 and 30 on collection of rent on leases and licenses.

LAND REGISTRATION ACT NO. 3 OF 2012

THAT the proposed amendment to section 2 of the Land Registration Act be deleted.

Justification

The amendment contravenes the provisions of Article 165(5)(b) of the Constitution which provides that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162(2) of the Constitution which are the Environment and Land Court established under Article 162(2) of the Constitution.

Signed..........Date.....14/06/2018.....

The Hon. Dr. Rachel Nyamai, MP.
Chairperson Departmental Committee on Lands

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