



LAWS OF KENYA

THE REGISTRATION OF TITLES ACT

CHAPTER 281

Revised Edition 2010 (1982)
Published by the National Council for Law Reporting
with the Authority of the Attorney General

CHAPTER 281

THE REGISTRATION OF TITLES ACT

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THE REGISTRATION OF TITLES ACT

Commencement: The Act excepting Part III-21st January, 1920

Part III (in the Coast Province only)-1st November, 1920

An Act of Parliament to provide for the transfer of land by registration of titles

PART I—PRELIMINARY

Short title,
commencement and
application.

1. (1) This Act may be cited as the Registration of Titles Act and shall come into operation in respect of any Part thereof on such date as the President may by notice in the Gazette appoint.

(2) Except so far as is expressly enacted to the contrary, no Act in so far as it is inconsistent with this Act shall apply or be deemed to apply to land, whether freehold or leasehold, which is under the operation of this Act.

(3) (a) Nothing contained in this Act shall apply to land in respect of which a lease has issued from the Government for a term of years and in respect of which the Government has covenanted to grant a further lease upon compliance with building conditions, and such renewal or extension of lease may be made, issued and registered as though this Act had never been enacted.

(b) This subsection shall not apply to grants issued under this Act before the 16th November, 1929.

(c) Notwithstanding anything contained in this subsection, a lessee may elect to have a further lease or grant under this Act, and in that event a lease or grant shall be issued under this Act and shall be subject to this Act as though this subsection had never been enacted.

(4) The President may by order published in the Gazette apply this Act to any area.

2. In this Act, except where there is something repugnant in the subject or context—

Interpretation.
23 of 1959, s. 2.

“charge” means any charge created on land for the purpose of securing the payment of money and also the instrument by which the charge is created;

“chargee” means the person in whose favour a charge is created, and includes the person for the time being entitled to the benefit of the charge;

“court” means the High Court;

“dealing” means any transaction, of whatever nature, by which land is affected;

“fraud” shall on the part of a person obtaining registration include a proved knowledge of the existence of an unregistered interest on the part of some other person, whose interest he knowingly and wrongfully defeats by that registration;

“grant” means any conveyance, agreement for sale, lease or licence for a period exceeding three years, made by and on behalf of the Government, and includes a certificate of title (other than a certificate of interest) issued by the Land Registration Court, and a certificate of title issued pursuant to the provisions of this Act;

“land” includes land and benefits to arise out of land or things embedded or rooted in the earth, or attached to what is so embedded for the permanent beneficial enjoyment of that to which it is so attached, or permanently fastened to anything so embedded, rooted or attached, or any estate or interest therein, together with all paths, passages, ways, waters, watercourses, liberties, privileges, easements, plantations and gardens thereon or thereunder lying or being, unless specifically excepted;

“Land Registration Court” means the court constituted by the Land Titles Act;

Cap. 282.

“lunatic” means any person who has been by reason of mental incapacity found by a court to be incapable of managing his own affairs;

“memorial” means the entry signed by the registrar on the grant or certificate of title embodied in the register of any instrument presented for registration with the time of registration;

“person of unsound mind” means any person who, though not having been found a lunatic by a court, is, in fact, by reason of mental incapacity, incapable of managing his own affairs;

“proprietor” means the person or corporation registered under this Act as the owner of land or as a lessee from the Government;

“register” means the register of titles to land to be kept in accordance with this Act;

“registrar” means the principal registrar of titles or a registrar of titles appointed under this Act and the words “the registrar” mean with reference to any particular piece of land, or any right, title or interest therein, or any duty or obligation connected therewith, or any matter whatsoever incidental thereto, the registrar of the registration district in which such land is situated;

“registration district” means a district created by the Minister under section 4;

“transfer”, used in connexion with land or a charge, means the passing of the land or charge by act of the parties and not by operation of law, and also the statutory instrument by which the passing is effected;

“transmission”, used in connexion with land or a charge, means the passing of the land or charge by operation of law or by virtue of appointment or succession as trustee under any will or settlement or by virtue of appointment to any office;

“trust” and “trustees for sale” have the meaning assigned to these expressions by the Trusts of Land Act, but do not include a Wakf created under the rules of Mohammedan law or trustees appointed thereunder.

Cap. 290.

Application of
Cap. 282.

3. The registration provisions of the Land Titles Act shall cease to apply in respect of all lands comprised in any certificate of title (other than a certificate of interest) coming under the provisions of this Act, or issued by the Land Registration Court after the commencement of this Act.

PART II—CREATION OF DISTRICTS AND APPOINTMENT OF
OFFICERS

4. (1) The President may by warrant under his hand and seal divide Kenya into districts, called registration districts, for the purposes of this Act.

Registration districts
and registrars.
23 of 1959, s.
3.

(2) The President may appoint a principal registrar of titles and so many registrars of titles and other officers as he may think necessary for the carrying out of this Act.

(3) Every registrar shall have a seal of office, with which he shall seal all certificates of title issued by him, and stamp all instruments presented to him for the purpose of authorizing an act of registration.

5. The President shall appoint an officer, to be styled the Commissioner of Lands, who shall be placed in control of the Land, Land Surveys, Land Registration and Recorder of Titles Departments, and who shall be *ex officio* Registrar-General under this Act.

Commissioner of
Lands.

PART III—BRINGING LAND UNDER THE ACT

6. Land which was alienated or agreed to be alienated in fee or for years by or on behalf of the Government before the commencement of this Act, and has been surveyed and land in respect of which a certificate of title (other than a certificate of interest) has been issued by the Land Registration Court, may be brought under the operation of this Act on an application in form A in the First Schedule, which application may be made by any of the following persons—

What land and
on application by
what persons can
be brought under
Act.

- (a) the person claiming to be the owner of the fee simple or term of years;
- (b) persons who collectively claim to be the owners of the fee simple or term of years;
- (c) persons who have the power of appointing or disposing of the fee simple or term of years;
- (d) the guardian of any minor or the representative of any lunatic or person of unsound mind, so however that the application is made on behalf of the minor, lunatic, or person and the certificate of title is directed to issue in the name of the registered minor;

Provided that—

- (i) a mortgagor shall not be entitled to make an application unless the mortgage has first served a notice on the mortgagee in that behalf; nor a mortgagee unless in the exercise of his power of sale, and unless the certificate of title is directed to issue in the purchaser's name;
- (ii) the attorney of any corporation, howsoever and wheresoever incorporated, whether already constituted or hereafter to be constituted by a power of attorney under a seal purporting to be the common seal of the corporation giving the power may make an application for or on behalf of the corporation of which he is the attorney, and may make the requisite declaration to the best of his knowledge, information and belief, and may subscribe the application under his own name.

When registration shall await expiry of notice.

7. If it appears to the Registrar-General in an application under section 6 that all encumbrances affecting the land (excepting such as are hereinafter mentioned as not requiring special notification) have been released, or that the owners thereof have had notice of the application, or that any encumbrance (not being a mortgage the owner whereof has not had notice of this application) may be specified in the certificate of title and continue outstanding, the Registrar-General shall publish notice of the application in the Gazette, and shall serve it on the persons concerned; and shall appoint a time not less than fourteen days nor more than twelve months from the publication of the notice on or after the expiration of which the Registrar-General will, unless a caveat is lodged forbidding it, bring the land under the operation of this Act.

Rejection of application for delay.

8. The Registrar-General may, after sending through the post office by a registered letter to the applicant or his agent one month's notice in this behalf, reject the application unless the applicant adduces satisfactory proof that he is proceeding without unnecessary delay in complying with any requisitions on the title made by the Registrar-General.

Notice of application.

9. Upon any application being made to bring land under this Act the Registrar-General shall serve the notice thereof mentioned in section 7 to be served on all persons appearing on the register to have a then subsisting estate or interest in the land, by sending through the post office a registered letter marked outside "Registry of Titles", containing a copy of the notice addressed to the person at the address (if any) appearing upon the register.

10. If before the registration of the certificate the Registrar-General has not received a notice forbidding it, he shall bring the land under this Act by registering in the name of the applicant or in the name of such person as has been directed in that behalf a certificate of title to the land in form C or form D in the First Schedule, as the case may be.

Land to be brought under Act unless notice lodged.

11. (1) Any person claiming any estate or interest in the land described in the notice may, before the registration of the certificate, give notice of such claim to the Registrar-General in form E in the First Schedule, forbidding the bringing of such land under this Act.

Parties interested may give notice.

(2) Every such notice shall be signed by the person giving it, or by his agent, and shall particularize the estate or interest claimed; and the person lodging the notice shall if required by the Registrar-General support it by an affidavit stating the nature of the title under which the claim is made, and also deliver an abstract of the title to the estate or interest.

12. (1) The Registrar-General upon receipt of the notice shall notify receipt to the applicant, and shall suspend further proceedings in the matter until the notice has been withdrawn or has lapsed as hereinafter provided or until an order in the matter has been obtained from the court.

Suspension of proceedings on giving of notice.

(2) The applicant may cause the person giving notice to be summoned to attend before the court to show cause why the notice should not be removed; and the court may, upon proof that the person giving notice has been duly served, make such order in the premises either *ex parte* or otherwise and as to costs as it deems fit.

13. (1) After the expiration of one month from the receipt thereof, the notice shall be deemed to have lapsed, unless the person by whom or on whose behalf it was lodged within that time has taken proceedings in a court to establish his title to the estate or interest specified in the notice, and has given written notice thereof to the Registrar-General, or has obtained and served on him an injunction or order of the court restraining him from bringing the land under this Act.

Lapse of notice unless proceedings taken within one month.

(2) A notice shall not be renewed by or on behalf of the same person in respect of the same estate or interest.

14. After an application has been made to have any land brought under the operation of this Act, the Registrar-General may require all persons having in their possession or custody any deeds, instruments or evidences of title relating to or affecting the land the subject of the application to produce them at the Registry of Titles to him for his inspection, upon such terms and subject to such conditions and for such fee as he thinks just and fixes.

Registrar-General may require production of title deeds.

Applicant may withdraw application.

15. An applicant may withdraw his application at any time before the registration of the certificate; and the Registrar-General shall in that case return to the person who lodged them all muniments of title lodged in support of the application; but in that case, if a caveat has been put to expense without sufficient cause by reason of the application, he shall be entitled to receive from the applicant such compensation as a judge of the court on a summons in chambers thinks just.

Cancellation and disposal of prior title deeds.
Cap. 285.
Cap. 282.
Cap. 280.

16. (1) Upon registering a certificate of title, the Registrar-General shall endorse and sign upon the last in date of the documents registered under the Registration of Documents Act, the Land Titles Act or the Government Lands Act as have been lodged in support of the application a memorandum that the land included in the document has been brought under this Act, and, if the documents lodged relate to any property other than the land included in the certificate, the Registrar-General shall return them to the applicant or to the person lodging them; otherwise the Registrar-General shall stamp each of them as cancelled, and after he has so stamped them shall retain them in the office.

(2) No action shall be brought upon any covenant or agreement for the production of the documents which are so retained or upon any agreement to give or enter into a covenant for the production thereof; and if any such action is commenced it shall be a sufficient answer thereto that such documents are retained under this Act.

Subsisting lease to be endorsed.

17. Where any subsisting lease has been lodged, the Registrar-General shall, after he has endorsed it as provided in section 16 in the case of the last in date of material registered documents, return the lease to the person lodging it.

Record book.

18. (1) The Registrar-General shall keep a book, to be called the record book, in which shall be kept a record of all deeds and documents produced and used in support of each application to bring land under this Act which hereafter is granted.

(2) The record shall state briefly the nature and date of and parties to every deed or document, by whom executed or signed, and whether registered under the Registration of Documents Act, the Land Titles Act or the Government Lands Act or not, and if registered the date of registration; and the record book shall be kept open for inspection by the public during the hours and days of business on payment of the prescribed fee.

Cap. 285.

Cap. 282.

Cap. 280.

Closing of previous register: commencement of Part in certain places.

19. (1) When land has been brought under this Act, the register kept under the Government Lands Act, the Land Titles Act or the Registration of Documents Act, as the case may be, shall be closed so far as concerns that land, and there shall be no further registration in

respect thereof in those registers.

Cap. 280.
Cap. 282.
Cap. 285.

(2) This Part shall be deemed to have come into operation in the Coast District, comprising the Provinces of Seyidie, Tanaland and Jubaland on the 1st November, 1920.*

PART IV—GRANTS, TRANSFERS AND TRANSMISSIONS OF LAND

20. After the commencement of this Act and subject to the provisions of subsection (2) of section 1 thereof, all land which is comprised in any grant issued after the commencement of this Act shall be subject to this Act, and shall not be capable of being transferred, transmitted, mortgaged, charged or otherwise dealt with except in accordance with the provisions of this Act, and an attempt to transfer, transmit, mortgage, charge or otherwise deal with it, except as so provided, shall be void and of no effect.

Land comprised in grant issued after this Act to be subject thereto.

21. (1) Grants shall be issued in form B (1) or form B (2) in the First Schedule, as the case may be, and every grant, in addition to proper words of description, shall contain a diagram of the land on such scale as the Commissioner of Lands may from time to time direct.

Grants.
23 of 1959, s. 4.

(2) Every grant shall be delivered out of the Land Office to the registrar of the registration district in which the land is situated, who shall, on receiving the prescribed fee—

- (a) register the grant in manner hereinafter directed;
- (b) deliver the grant to the Commissioner of Lands for issue to the grantee; and
- (c) file a photostat copy of the grant in the register.

22. (1) Whenever land comprised in a grant has been transmitted as hereinafter provided, the registrar shall, on payment of the prescribed fee, issue a certificate of title in favour of the new proprietor in form C or form D in the First Schedule and he shall thereafter—

Certificate of title.
23 of 1959, s. 5.

- (a) register the certificate of title as hereinafter directed;
- (b) deliver the certificate of title to the new proprietor; and
- (c) file a photostat copy thereof in the register.

(2) When a certificate of title is issued under subsection (1), all previous certificates of title shall be delivered up to the registrar and cancelled by him.

* The Province of Jubaland was ceded to Italy in 1922 and a description of the boundaries of the area now affected by this subsection may be inspected at the Survey Department, Survey of Kenya, Nairobi.

(3) The title of the proprietor under each fresh certificate of title shall be as valid and effectual in every respect as if he had been the original grantee in the grant of the land contained in the certificate.

(4) (a) When two or more persons are entitled as tenants in common, the registrar shall issue to those persons one certificate of title for the entirety describing them as tenants in common.

(b) Notwithstanding the provisions of paragraph (a), the registrar may, in his discretion and on payment of the prescribed fee, issue a separate certificate to each such person for his undivided share.

(c) If in the exercise of his discretion under paragraph (b) the registrar refuses to issue a separate certificate of title to any person, that person may apply for the issue of a separate certificate of title to the Registrar-General, who may either grant or refuse the application.

Certificate of title to
be held conclusive
evidence of
proprietorship.
23 of 1959, s. 6.

23. (1) The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive 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, except on the ground of fraud or misrepresentation to which he is proved to be a party.

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

Fraud and error.
23 of 1959, s. 7.

24. Any person deprived of land or of any interest in land in consequence of fraud or through the bringing of that land under the operation of this Act, or by the registration of any other person as proprietor of the land or interest, or in consequence of any error or misdescription in any grant or certificate of title or any entry or memorial in the register, or any certificate of search, may bring and prosecute an action at law for the recovery of damages against the person upon whose application the land was brought under the operation of this Act, or the erroneous registration was made, or who acquired title to the interest through the fraud, error or misdescription:

Provided that—

(i) except in the case of fraud or of error occasioned by any omission, misrepresentation or misdescription in the application of a person to bring the land under the operation of this Act, or to be registered as proprietor of

the land or interest, or in any instrument signed by him, that person shall upon a transfer of the land bona fide for value cease to be liable for the payment of any damages, which, but for that transfer, might have been recovered from him under the provisions herein contained; and in the last-mentioned case, also in case the person against whom the action for damages is directed to be brought is dead or has been adjudged insolvent or cannot be found within the jurisdiction of the court, then the damages with costs of action may be recovered out of the public funds of Kenya by action against the registrar as nominal defendant;

(ii) in estimating the damages, the value of all buildings and other improvements erected or made subsequently to the deprivation shall be excluded;

(iii) no such damages may be recovered out of public funds for any loss, damage or deprivation occasioned by the improper or irregular exercise of the mortgagee's statutory power of sale conferred by the Transfer of Property Act, 1882, of India, in its application to Kenya.

O.I.C. & A.A.

PART V—REGISTER OF TITLES AND MODE AND EFFECT OF REGISTRATION

25. The registrar of each registration district shall keep a register, called the register of titles, and shall file therein the photostat copies of all grants and of all certificates of title to be issued as hereinafter provided, and each grant and certificate of title shall constitute a separate folio of the book; and the registrar shall record therein the particulars of all instruments, dealings and other matters by this Act required to be registered or entered in the register, affecting the land contained in each grant or certificate of title.

Register of titles.
23 of 1959, s. 8.

26. (1) The registrar of each registration district shall also keep a book, to be called the presentation book, in which shall be entered by a short description every instrument which is given in for registration, with the day and hour and, when that is required by the person presenting the instrument, the minute of presentation, and for the purpose of priority the time of presentation shall be taken as the time of registration.

Presentation book.
23 of 1959, s. 9.

(2) The registrar in entering memorials upon the photostat copies of grants and certificates of title embodied in the register and endorsing a memorandum upon an instrument to be issued shall take the time from the presentation book as the time of registration.

When instrument
deemed to be
registered.

27. Every grant shall be deemed and taken to be registered under and for the purposes of this Act as soon as it has been marked by the registrar with folio and volume, so as to indicate its place in the register; and every transfer and other instrument purporting to transfer or in any way to affect the land under this Act shall be deemed to be so registered as soon as a memorial thereof, as hereinafter described, has been entered in the register upon the folio constituted by the existing grant or certificate of title of that land.

Priority given by
registration not by
execution.
23 of 1959, s. 10.

28. Except as is hereinafter otherwise provided, every instrument presented for registration shall be accompanied by the prescribed form and fee, and shall be registered in the order of time in which it is presented for that purpose; and instruments registered in respect of or affecting the same land shall be entitled to priority according to the date of registration, and not according to the date of each instrument itself; and the registrar, upon registration thereof, shall file a photostat copy in the registry of titles and shall deliver the original to the person entitled thereto, and as soon as it is registered every instrument shall, for the purposes of this Act, be deemed and be taken to be embodied in the register as part and parcel thereof.

Agreement by
transferor implied in
all transfers.

29. In every instrument creating or transferring an interest in land, there shall be implied the agreement by the party creating or transferring the interest that he will do such acts and execute such instruments as may be necessary in accordance with the provisions of this Act to give effect to all agreements, conditions and purposes expressly set out in the instrument, or declared by this Act to be implied against that party in instruments of a similar nature.

Memorial of
registration.

30. Every memorial entered in the register shall state the nature of the instrument to which it relates, the day and hour of the production of the instrument for registration, and the names of the parties thereto, and shall refer by number or symbol to the instrument, and shall be signed by the registrar.

Memorial in certain
cases to be endorsed
on duplicate
instruments.
23 of 1959, s. 11.

31. Whenever a memorial of an instrument has been entered in the register, the registrar shall, except in the case of transfer or other dealing endorsed upon any grant, certificate or other instrument as hereinafter provided, record the same memorial on the photostat copy of the grant, certificate or other instrument evidencing title to the land intended to be dealt with or in any way affected, and the registrar shall endorse on every instrument so registered a certificate of the time at which the instrument was presented to be registered, and shall authenticate each certificate by signing his name and affixing his seal thereto, and a certificate shall be conclusive evidence that the instrument has been duly registered.

32. (1) No instrument, until registered in the manner herein before described, shall be effectual to pass any land or any interest therein, or render the land liable as security for the payment of money, but upon the registration of an instrument in the manner hereinbefore prescribed the land specified in the instrument shall pass, or, as the case may be, shall become liable as security in the manner and subject to the agreements, conditions and contingencies set out and specified in the instrument, or declared by this Act to be implied in instruments of a similar nature.

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

33. (1) A registrar shall not register any instrument purporting to transfer or otherwise deal with or affect any land except land situated within the registration district for which he has been appointed, and except in the manner herein provided, nor unless the instrument is in accordance with the provisions hereof, but any instrument in substance in conformity with the forms annexed hereto shall be sufficient:

Provided that the registrar may reject any instrument appearing to be unfit for registration or unsuitable for a photostat copy; and any person who is dissatisfied with a decision of a registrar made under this section may appeal to the Registrar-General, whose decision shall be final, subject to any further appeal to the court as provided for in section 62.

(2) A registrar shall not register any instrument purporting to transfer any land situated within the area of jurisdiction of a local authority unless there is produced to the registrar the written statement mentioned in section 21 of the Rating Act and unless that statement is expressed to be available until the day upon which, or until a day not earlier than that upon which, the instrument was registered.

(3) A registrar shall not register any document purporting to transfer or create any interest in land, unless a certificate is produced to him certifying that no rent is owing to the Government in respect of the land, or that the land is freehold.

PART VI—TRANSFERS

34. When land is intended to be transferred or any right of way or other easement is intended to be created or transferred, the registered proprietor or, if the proprietor is of unsound mind, the guardian or other person appointed by the court to act on his behalf in the matter, shall execute, in original only, a transfer in form F in the First Schedule, which transfer shall, for description of the land intended to be dealt with, refer to the grant or certificate of title of the land, or shall give

Unregistered
instrument invalid.
20 of 1989.

Registrar may
refuse to register
instrument.
23 of 1959, s. 12,
29 of 1967, 1st Sch.,
39 of 1968, s.9,
13 of 1972, Sch.

Cap. 267.

Form of transfer.

such description as may be sufficient to identify it, and shall contain an accurate statement of the land and easement, or the easement, intended to be transferred or created, and a memorandum of all leases, charges and other encumbrances to which the land may be subject, and of all rights-of-way, easements and privileges intended to be conveyed.

Procedure on
transfer.
23 of 1959, s. 13.

35. (1) If the transfer purports to transfer the whole or part of the land contained in any grant or certificate of title, the transferor shall deliver up the grant or certificate of title of the land, and the registrar shall, when registering the transfer, enter in the register, and endorse on the grant or certificate of title, a memorandum cancelling it, either wholly or partially, according as the transfer purports to transfer the whole or part only of the land contained in the grant or certificate of title.

(2) Any wholly cancelled grant or certificate shall be retained by the registrar, and any partially cancelled grant or certificate shall be returned endorsed to the transferor.

(3) The registrar shall make out to the transferee a certificate of title to the land mentioned in the transfer, and, whenever required by the proprietor of the untransferred portion, shall make out to the proprietor a certificate of title to that portion.

Entry of
memorandum in lieu
of cancellation of
grant or certificate.
23 of 1959, s. 13.

36. (1) If a transfer purports to transfer the whole of the land mentioned in any grant or certificate of title, the registrar may, instead of cancelling the grant or certificate as provided by sections 22 and 35, enter in the register and endorse on the grant or certificate a memorandum of the transfer, and deliver the grant or certificate so endorsed to the transferee, and every grant or certificate with that memorandum shall be as effectual for the purpose of evidencing title, and for all other purposes of this Act, as if the grant or old certificate had been cancelled and a new certificate had been issued to the transferee in his own name, and the foregoing process in lieu of cancellation may be repeated upon every transfer of the whole of the land, but when in the opinion of the registrar any grant or certificate cannot for want of space or other cause conveniently bear any further endorsement, he may require cancellation and the issue of a new certificate.

(2) Where part only of the land is transferred the registrar shall apportion any rent or other annual payments payable to the Government in respect of the land, and shall enter on the certificate of title issued by him to the transferee and transferor respectively the amounts thenceforward payable in respect of the part transferred and the balance respectively:

Provided that any sum so payable annually in respect of any subdivision shall in no case be less than ten shillings.

(3) If either party is dissatisfied with the apportionment made by the registrar he may request the registrar in writing to refer the question of apportionment to the court, and the registrar shall thereupon refer it accordingly.

37. (1) Leases and charges may be transferred by a transfer executed in duplicate in form G in the First Schedule.

Form of transfer of charge.

(2) The transfer must be registered in the usual manner, and transferees shall have priority according to the date and time of registration.

38. Upon the registration of any transfer of any charge or lease, the interest of the transferor as set out in instrument, with all rights, powers and privileges belonging or appertaining thereto, shall pass to the transferee, and the transferee shall thereupon become subject to and liable for the same requirements and liabilities to which the transferor would have been subject and liable if the transfer had not been made.

Liabilities of transferee of charge or lease.

39. The right to sue upon any charge or other instrument, and to recover any money or damages thereunder, and all interest in the money or damages, arising by virtue of a transfer under this Part shall be transferred so as to vest the right in the transferee thereof:

Rights of transferor to be vested in transferee.

Provided that nothing herein contained shall prevent the court from giving effect to any trusts affecting the money or damages in case the transferee holds it or them in trust for any other person.

PART VII—LEASES

40. When any land is intended to be leased for any term exceeding twelve months, the proprietor, or if the proprietor is a minor or of unsound mind the guardian, next friend or other person appointed by the court to act on behalf of the minor or person of unsound mind in the matter, shall execute a lease in form H in the First Schedule, and every such instrument shall, for description of the land intended to be dealt with, refer to the grant or certificate of title of the land, or shall give such other description as may be necessary to identify the land:

Form of lease.

Provided that no lease for the period above specified shall be valid unless registered.

41. Any lease or agreement for a lease granted for a term not exceeding twelve months shall be valid without registration:

Lease for twelve months valid without registration.

Provided that no right to purchase the land contained in any such lease or agreement shall be valid as against any subsequent purchaser of the land unless the lease or agreement be registered.

Short forms of covenants.

42. (1) Whenever in any lease made under this Act the lessee employs any of the forms of words contained in column one of form I in the First Schedule, and distinguished by any number therein, that lease shall be taken to have the same effect and be construed as if he had inserted therein the form of words contained in column two of that form and distinguished by the corresponding number; and every such form shall be deemed a covenant with the lessor and his transferees by the lessee binding the latter and his executors, administrators and transferees; but it shall not be necessary in any such lease to insert any such number.

(2) There may be introduced into or annexed to any of the forms in column one any express exceptions from or express qualifications thereof respectively; and the same exceptions or qualifications shall be taken to be made from or in the corresponding forms in column two.

Determination of lease to be entered in register.
23 of 1959, s. 14.

43. The registrar, upon proof to his satisfaction of lawful re-entry and recovery of possession by a lessor, shall note the fact by entry in the register, and the lease shall thereupon determine, but without releasing the lessee from his liability in respect of the breach of any expressed or implied agreements in the lease.

Surrender of lease to be entered in register.

44. (1) Whenever any lease which is required to be registered by the provisions of this Act is intended to be surrendered, and the surrender thereof is effected otherwise than by operation of law, there shall be endorsed upon the lease the word "surrendered", with the date of surrender, and the endorsement shall be signed by the lessee and the lessor as evidence of the acceptance thereof, and shall be attested by a witness; and the registrar thereupon shall enter in the register a memorial recording the date of surrender and shall likewise endorse upon the lease a memorandum recording the fact of the entry having been so made in the register, and thereupon the interest of the lessee in the land shall vest in the lessor or in the person in whom having regard to intervening circumstances, if any, the land would have been then vested if no such lease had ever been executed; and production of the lease or counterpart bearing the endorsed memorandum shall be sufficient evidence that the lease has been so surrendered:

Provided that no lease subject to a charge shall be surrendered without the consent of the chargee.

45. Where a lessee or his assignee has delivered to the lessor or his agent the duplicate of the lease, accompanied by some writing signed by the lessee or his assignee and attested in the manner prescribed by section 58 evidencing his intention to give up possession of the land contained in the lease, the registrar may, upon application to him by the lessor and production of such evidence as he may require that the lessee or his assignee has abandoned the occupation of the land contained in the lease, make an entry in the register of the surrender of the lease.

Abandonment of
lease.

PART VIII—CHARGES

46. (1) Whenever any land is intended to be charged or made security in favour of any person other than by way of deposit of documents of title as provided for by section 66, the proprietor or lessee or, if the proprietor or lessee is of unsound mind, the guardian or other person appointed by the court to act on his behalf in the matter shall execute a charge in form J (1) or J (2) in the First Schedule, which must be registered as hereinbefore provided.

Form of charge.
15 of 1961, Sch.

(2) The charge when registered shall (subject to any provisions to the contrary therein contained) render the property comprised therein subject to the same security, and to the same powers and remedies on the part of the chargee, as are the case under a legal mortgage of land which is not registered under this Act.

47. Upon the production of any charge having thereon an endorsement signed by the chargee and attested in the manner prescribed by section 58 for the attestation of instruments discharging the land from the whole or part of the money secured, or discharging any part of the land contained in the instrument from the whole of those moneys, or upon proof of the occurrence of the event upon which, in accordance with the provisions of any charge, the money thereby secured shall cease to be payable, and upon proof that all arrears have been paid, satisfied or discharged, the registrar shall make an entry in the register noting that the charge is discharged wholly or partially, or that part of the land is discharged, or that the charge is satisfied and discharged, as the case may require, and upon entry being so made the land mentioned or referred to in the endorsement, or other instrument evidencing that the charge is satisfied and discharged, shall cease to be subject to or liable for those moneys, or for the part thereof, or subject to the charge, as the case may be, noted in the entry as discharged, and the registrar shall, in any or either case, endorse on the grant evidencing the title of the land charged a memorandum of the date on which the entry was made by him in the register, whenever the grant is presented to him for that purpose.

Discharge of charge.

Discharge of charge
where chargee
abroad.
L.N. 761/1963.

48. If any person is entitled to pay off the charge and the registered chargee is absent from Kenya, and there is no person authorized under a power of attorney to give a receipt for the money, the registrar may receive the money with all arrears then due in trust for the person entitled thereto, and the registrar shall make an entry in the register discharging the charge, stating the day and hour on which the entry is made, and the entry shall be valid discharge for the charge and shall have the same force and effect as is given to a similar entry when made upon production of the instrument of charge with the receipt of the charges, and the registrar shall endorse on the grant, certificate of title or other instrument, and also on the instrument of charge, whenever those instruments are brought to him for that purpose, the several particulars hereinbefore directed to be endorsed upon each of those instruments, respectively.

Application of Part.

49. The provisions of this Part shall not apply to a charge by deposit of documents of title.

PART IX—POWERS OF ATTORNEY

Form of power of
attorney.

50. The proprietor of any land, if not a minor, a lunatic or a person of unsound mind, may appoint any person to act for him in respect of the transfer or other dealing with the land in accordance with this Act by executing a power in form M in the First Schedule, and a duplicate or an attested copy thereof shall be deposited with the registrar, who shall enter in the register a memorandum of the particulars therein contained and of the date and hour of its deposit with him:

Provided that—

(i) a power of attorney executed in due and customary form and giving sufficient powers in the opinion of the registrar may be registered as though executed in form M;

(ii) a power of attorney registered before the date of this Act in accordance with the provisions of the Registration of Documents Act, or the Government Lands Act, shall be deemed to be duly registered for the purposes of this section, provided it has been so registered prior to any act thereunder being effected in respect to land registered under this Act; but nothing in this section shall make valid a power otherwise invalid, or any transaction under it, by reason of that action.

Cap. 285.
Cap. 280.

Form of revocation
of power of attorney.

51. A power of attorney may be revoked by an instrument of revocation in form N in the First Schedule, and after the registration of revocation of the power the registrar shall not give effect to any transfer or other instrument signed pursuant to that power:

Provided that—

- (i) a revocation executed in due and customary form may, at the discretion of the registrar, be registered as though executed in form N;
- (ii) a revocation of any power of attorney referred to in paragraph (ii) of the proviso to section 50 shall be registered in accordance with the provisions of the Act under which the power of attorney is registered.

PART X—TRANSMISSIONS

52. Whenever, the proprietor of any land dies, the representative of the deceased proprietor shall, before any dealing with the land, make an application in writing to the registrar of the registration district within which the land is situated to be registered as proprietor, and shall produce to the registrar the probate or letters of administration, and thereupon the registrar shall enter in the register a memorial of the date of the probate or letters of administration, the date and hour of their production to him and the date of the death of the proprietor, when it can be ascertained, and shall add the words “as representative” after the name of the person to whom probate or letters of administration was granted; and upon entry being made the representative shall be deemed to be the proprietor of the land or such part thereof as for the time being remains undisposed of, and the registrar shall note the fact of registration by memorandum on the probate or letters of administration:

Death of proprietor of land.

Provided that the title of the representative to the land shall relate back and take effect as from the date of the death of the deceased proprietor.

53. Whenever any charge or lease affecting land is transmitted in consequence of the death of the proprietor thereof, the probate or letters of administration, accompanied by an application in writing from the representative claiming to be registered as proprietor in respect of the charge or lease, shall be produced to the registrar, who shall thereupon enter in the register, and on the instrument evidencing title to the charge or lease transmitted, the date of the issue of probate or letters of administration, the date and hour of their production to him and the date of the death of the proprietor, when it can be ascertained, with such other particulars as he may deem necessary; and upon entry being made the representative shall be deemed to be the proprietor of the charge or lease, and the registrar shall note the fact of registration by memorandum under his hand on the document evidencing the issue of probate or letters of administration.

Death of proprietor or charge or lease.

Representative to hold property subject to trusts affecting it.

54. Any person registered as the representative of a deceased person shall hold the land in respect of which he is registered for the purpose to which it is applicable according to equity and good conscience, and subject to any trusts upon which the deceased proprietor held it, but for the purpose of any registered dealings with the land he shall, subject to the provisions of this Act, be deemed to be the absolute proprietor thereof.

Transmission after execution.

55. (1) No execution or notice of sale for the recovery of any rent due to the Government shall affect any land until the registrar of the registration district within which the land is situated is served with a copy of the warrant of execution or notice of sale, as the case may be, accompanied by a statement signed by any party interested, or by his agent, or by the Commissioner of Lands, specifying the land sought to be affected thereby, and, after marking upon the copy the time of service, enters a notice thereof in the register.

(2) The entry shall operate as a caveat against any alienation other than in pursuance of the warrant or notice of sale while it remains in force, and after any land so specified has been sold under the warrant or notice of sale the registrar shall, on receiving a transfer thereof in one of the forms O in the First Schedule, make an entry thereof in the register and thereupon the purchaser shall be deemed the proprietor of the land:

Provided that, until entry of notice has been made, no sale or transfer under the warrant or notice of sale shall be valid as against a purchaser for valuable consideration, notwithstanding the purchaser had actual notice of the warrant or notice of sale.

(3) Upon production to the registrar of sufficient evidence of the satisfaction of any warrant, a copy whereof has been served, or of the payment of the arrears in respect of which the notice of sale or copy thereof has been served and of the interest and expenses, he shall cause an entry to be made in the register to that effect, and on entry the warrant or notice of sale shall cease to affect any land specified unless a transfer upon a sale under the warrant or notice of sale is registered within six months from the day on which the copy is served.

Transmission to proprietor preferred by court.

56. Whenever the court has made an order preferring as proprietor of lands any person other than the registered proprietor thereof, the registrar, on being served with an office copy of the order, shall enter in the register and on the grant or other instrument evidencing title to the land the date of the order, the date and hour of its production to him, and the name and description of the person in whom the order purports to vest the land, and that person shall thereupon be deemed to be the proprietor of the land; and unless and until the entry is made the order

shall have no effect.

PART XI—CAVEATS

57. (1) Any person claiming the right, whether contractual or otherwise, to obtain some defined interest in any land capable of creation by an instrument registrable under this Act, and any person in whose favour a debenture has been executed by a company within the meaning of the Companies Act or by a company to which Part X of that Act applies creating a floating charge over land (hereinafter called the caveator), may lodge a caveat with the registrar of the registration district within which the land is situated forbidding the registration of any dealing with that land either absolutely or unless the dealing is expressed to be subject to the claim of the caveator as may be required in the caveat, or to any conditions conformable to law expressed therein.

(2) A caveat shall be in form P in the First Schedule, and shall be verified by the oath of the caveator or his agent, and shall contain an address within Kenya at which notices shall be served.

(3) Upon the receipt of a caveat, the registrar shall make a memorandum thereon of the date and hour of its receipt, and shall enter a memorandum thereof in the register, and shall forthwith send a notice of the caveat, through the post office or otherwise, to the person against whose title the caveat has been lodged (hereinafter called the caveatee).

(4) So long as any caveat remains in force prohibiting the transfer or other dealing with land, the registrar shall not, unless the caveator consents in writing or (if the caveat does not forbid registration absolutely) the transaction is expressed to be made subject to the claim of the caveator or to any conditions expressed in the caveat, enter in the register any memorandum of transfer or other instrument purporting to transfer or otherwise deal with or affect the land in respect to which the caveat may be lodged.

(5) The proprietor or other person claiming land may, by summons, call upon the caveator to attend before the court to show cause why the caveat should not be withdrawn, and the court may, upon proof that the caveator has been summoned, and upon such evidence as the court may require, make such order in the matter, either *ex parte* or otherwise, as it deems fit; and, where a question of right or title requires to be determined, the proceedings shall be as nearly as may be in conformity with the rules of the court in relation to civil causes.

(6) Except in the case of a caveat lodged by the registrar, the caveatee may make application in writing to the registrar to remove

Who may lodge
caveat.
23 of 1959, s. 15.

Cap. 486.

Form of caveat.

Notice to caveatee.

Effect of caveat.

Opposing caveat.

Removal of caveat.
6 of 1979, Sch.

the caveat, and thereupon and upon payment of the prescribed fee the registrar shall give forty-five days' notice in writing to the caveator requiring that the caveat be withdrawn, and, after the lapse of the service of the notice at the address mentioned in the caveat, the registrar shall remove the caveat from the register by entering a memorandum that it is discharged, unless he has been previously served with an order of the court extending the time as herein provided.

Caveatee to give address.

(7) The caveatee shall in his application give an address in Kenya at which notices and proceedings may be served.

Extent of time.
19 of 1982.

(8) The caveator may, either before or after receiving the notice from the registrar, apply by summons to the court for an order to extend the time beyond the forty-five days mentioned in the notice, and the summons may be served at the address given in the application of the caveatee, and the court may, upon proof that the caveatee has been summoned and upon such evidence as the court may require, make such order in the matter, either *ex parte* or otherwise, as it deems fit.

Withdrawal of caveat.

(9) The caveator may, by notice in writing to the registrar, withdraw his caveat at any time, but withdrawal shall not prejudice the power of the court to make an order as to payment by the caveator of the costs of the caveatee incurred before the receipt by the caveatee of notice in writing of the withdrawal of the caveat.

Registration of withdrawal.

(10) An entry shall be made by the registrar in the register of the withdrawal, lapse or removal of any caveat or of any order made by the court.

No second caveat relating to same matter.

(11) The same person or anyone on his behalf shall not lodge a further caveat in relation to the same matter and against the same title.

Compensation for wrongful caveat.

(12) Any person, other than the registrar, lodging or continuing any caveat wrongfully and without reasonable cause shall be liable to make compensation to any person who may have sustained damage thereby.

PART XII—ATTESTATION OF INSTRUMENTS

Attestation of signatures.
23 of 1959, s. 16,
15 of 1961, Sch.

58. (1) Every signature to an instrument requiring to be registered and to a power of attorney whereof a duplicate or an attested copy is required to be deposited with the registrar shall be attested by one of the following persons—

(a) within Kenya—

- (i) a judge or magistrate;
- (ii) a registrar of titles;
- (iii) a notary public;
- (iv) an advocate;
- (v) a justice of the peace;
- (vi) the Registrar or Deputy Registrar of the High Court;
- (vii) an administrative officer;

(b) in the United Kingdom or the Commonwealth—

- (i) a judge or magistrate;
- (ii) a notary public;
- (iii) a commissioner of the Supreme Court of Judicature, empowered to take affidavit in that court;
- (iv) the mayor or recorder or other chief officer of any city or municipal corporation;

(c) in Uganda or Tanzania, in addition to the persons set out in sub-paragraphs (i) to (iv) of paragraph (b), an administrative officer;

(d) in any other place—

- (i) any Kenya consular officer, consular agent or proconsul, or acting consular officer, consular agent or pro-consul, exercising his functions in that place;
- (ii) any person specially appointed by the President in that behalf.

(2) Where an official holding a seal of office attests any instrument he shall authenticate his signature by his official seal.

(3) The provisions of this section shall not apply to an instrument executed by the President, nor to any instrument executed under its common seal by a company within the meaning of the Companies Act, Cap. 486, nor to any instrument duly executed by a company to which Part X of that Act applies.

(4) An instrument executed by a company within the meaning of the Companies Act shall be executed by means of the company's common seal affixed in accordance with the memorandum and articles of association.

PART XIII—RECTIFICATION OF TITLES: CANCELLATION OF ENTRIES AND CORRECTION OF INSTRUMENTS

Mode of rectification. **59.** (1) In the case of a non-existent or fictitious person being named as proprietor, the name in the register or document of title or other instrument may on the order of the competent authority be cancelled.

(2) In other cases, the rectification of grants, certificates of title and other instruments shall be effected by the addition of further endorsements correcting former endorsements which are found to be insufficient or to have been otherwise made in error.

Wrongful or fraudulent entries or retention of documents.

60. (1) Where it appears to the satisfaction of the registrar that a grant, certificate of title or other instrument has been issued in error, or contains any misdescription of land or of boundaries, or that an entry or endorsement has been made in error on any grant, certificate of title or other instrument, or that a grant, certificate, instrument, entry or endorsement has been fraudulently or wrongfully obtained, or that a grant, certificate or instrument is fraudulently or wrongfully retained, he may summon the person to whom the grant, certificate or instrument has been so issued, or by whom it has been obtained or is retained, to deliver it up for the purpose of being corrected.

(2) If that person refuses or neglects to comply with the summons, or cannot be found, the registrar may apply to the court to issue a summons for that person to appear before the court and show cause why the grant, certificate, or other instrument should not be delivered up to be corrected, and, if the person when served with the summons neglects or refuses to attend before the court at the time therein appointed, the court may issue a warrant authorizing and directing the person so summoned to be apprehended and brought before the court for examination.

Powers of court on refusal to deliver up document.

61. Upon the appearance before the court of any person summoned or brought by virtue of a warrant the court may examine that person on oath or affirmation, and may order him to deliver up the grant, certificate of title or other instrument, and, upon refusal or neglect to deliver it up pursuant to the order, may commit him to prison for any period not exceeding six months, unless the grant, certificate of title, or instrument is sooner delivered up; and in that case, or where the person has absconded so that a summons cannot be served upon him as hereinbefore directed, the court may direct the registrar to cancel

or correct any certificate of title or other instrument, or any entry or memorial in the register relating to the land, and to substitute and issue such certificate of title or other instrument, or make such entry, as the circumstances of the case may require.

PART XIV—SPECIAL JURISDICTION OF COURT

62. If any person is dissatisfied with any act, omission, refusal, decision, direction or order of the Registrar-General or a registrar, that person may require the Registrar-General or registrar to set out in writing under his hand the grounds of the act, omission, refusal, decision, direction or order, and thereupon that person may apply to the court for an order of mandamus.

Appeal from registrar.

63. (1) Whenever any question arises with regard to the performance of any duties or the exercise of any of the functions conferred or imposed upon a registrar by this Act, or in the exercise of any of the duties of a registrar, and question arises as to the true construction or validity or effect of any instrument or as to the person entitled or to the extent or nature of the right or interest, power or authority of any person or class of persons, or the mode in which any entry ought to be made on the register or certificate of title, or any doubtful or uncertain right or interest stated or dealt with by the registrar, he may refer the question to the court in form Q in the First Schedule, and the court shall allow any of the parties interested to appear before it and summon any other parties to appear and show cause, either personally or by agent, in relation thereto.

Reference to court on legal points.

(2) Upon a reference the court may decide the question or direct any proceedings to be instituted for that purpose or, without deciding the question, direct such particular form of entry to be made on the register or certificate of title as under the circumstances appears to be just.

64. In any proceedings respecting any land or in respect of any transaction or contract relating thereto, or in respect of any instrument, caveat, memorial or other entry affecting any such land, the court may, by order, direct the registrar to cancel, correct, substitute or issue any memorial or entry in the register, or otherwise to do such acts or make such entries as may be necessary to give effect to the judgment or order of the court.

Power of court to direct registrar.

PART XV—SPECIAL POWERS AND DUTIES OF REGISTRAR

65. (1) A registrar may exercise the following powers in addition to other powers conferred under this Act—

Powers of registrar.
23 of 1959, s. 18,
L.N. 761/1963.

To call for documents.

(a) he may require the proprietor of, or any other person interested in land in respect of which a transfer, transmission or other dealing is about to be registered to produce any grant, certificate of title, charge, lease, will or other instrument in his possession or within his control relating to the land;

To summon witnesses.

(b) he may summon the proprietor or other person to appear and give information or explanations respecting the land or the instruments affecting the title thereto, and, if upon requisition in writing made by the registrar the proprietor or other person refuses or wilfully neglects to produce the instruments or to allow them to be inspected, or refuses or wilfully neglects to give any information or explanation which he is required to give, he shall be guilty of an offence and liable to imprisonment for one month or to a fine of one thousand shillings, or to both, and, if he knowingly misleads or deceives any person authorized to demand the information or explanation, he shall be guilty of an offence and liable to imprisonment for six months or to a fine of two thousand shillings, or to both; and the registrar, if the instrument, information or explanation so withheld appears to him to be material, shall not be bound to proceed with the registration of the transfer or other dealing or with the issuing the registration abstract, as the case may be;

To enforce summons.

(c) a summons issued by the registrar under paragraph (b) shall be in form R in the First Schedule, and may be enforced by him in the same manner and by the same proceeding and with the same penalty as provided in sections 60 and 61 in relation to an instrument issued in error or wrongfully retained;

To administer oaths.

(d) he may administer oaths and affirmations or take a declaration in lieu thereof;

To make corrections.

(e) he may, upon such evidence as appears to him sufficient in that behalf, correct clerical errors in certificates of title or in the register, or in entries made therein respectively, and may supply entries omitted to be made:

Provided that in the correction of any error he shall not erase or render illegible the original words, and shall affix the date upon which the correction was made or entry supplied with his initials, and every certificate of title so corrected and every entry so corrected or supplied shall have effect as if the error had not been made or the entry omitted, except as regards any entry made in the register before the actual time of correcting the error or supplying the omitted entries;

(f) he may enter a caveat on behalf of the Government to prohibit the transfer or dealing with any land belonging to or supposed to belong to the Government and also to prohibit the dealing with any land in any case in which it appears to him that an error has been made by misdescription of the land, or otherwise in any certificate of title or other instrument, or for the prevention of any fraud or improper dealing or for any other sufficient cause;

and shall lodge a non-absolute caveat over any property in respect of which he is informed by the National Museums of Kenya that a declaration by the Minister under the National Museums and Heritage Act has been applied for, or is about to be gazetted or has been gazetted affecting the property in question and upon gazettlement the caveat takes effect as a charge over the land.

(g) he may mark or stamp any instrument produced to him with a memorandum indicating its production and the number distinguishing the application in reference to which it was produced;

(h) he may, if he sees reasonable cause for so doing, dispense with the production of any grant, certificate of title, lease or other instrument for the purpose of entering the memorial by this Act required to be entered upon the dealing with land, and upon registration of that dealing he shall notify in the memorial in the register that no entry of the memorial has been made on the grant or other instrument, and the dealing shall thereupon be as valid and effectual as if the memorial had been so entered:

Provided that before registering such dealing the registrar shall in such case require the party dealing to make an affidavit or declaration that such grant or instrument has not been deposited by way of lien or as security for any loan, and shall give at least fourteen days' notice in the Gazette of his intention to register such dealing;

(i) he may, at any time, after such inquiry and notices, if any, as he may consider proper, and upon production of such evidence as may be prescribed or as he may deem necessary, withdraw from the register by cancellation or otherwise any instrument or memorial which he is satisfied has determined or ceased or been discharged, or for any other reason no longer affects or relates to land;

To enter caveat on behalf of certain persons.
20 of 1989,
6 of 2006.

To mark instruments.

To dispense with production of instruments.

To cancel determined entries.
L.N. 761/1963.

To destroy documents.	(j) he may direct the destruction of any instrument in his possession or custody which has become altogether superseded by any memorial in the register, or has ceased to have any effect.
To require map.	(2) The registrar shall require the proprietor of land desiring to transfer or otherwise deal with a portion of it to deposit with the registrar a map or plan with the several measurements marked thereon certified by a Government or licensed surveyor and countersigned by the Director of Surveys, and, if the proprietor neglects or refuses to comply with that requirement, the registrar need not proceed with the registration of the transaction or dealing.
To demand and receive fees.	(3) The registrar shall demand and receive the several fees specified in the Second Schedule, and shall perform the duties and authorize the acts for which fees are specified therein.
To keep accounts.	(4) Every registrar shall keep a correct account of all sums of money received by him in accordance with this Act.
To be person employed in public service. Cap. 63.	(5) Every registrar shall be deemed to be a person employed in the public service within the meaning of the Penal Code.
PART XVI—MISCELLANEOUS	
Charge by deposit of documents.	<p>66. (1) A charge may be created by the deposit of documents of title to land under this Act, and shall be evidenced by an instrument in writing in form U in the First Schedule, which shall be registered, and no charge by deposit of documents of title may be created in any way other than as specified in this section.</p> <p>(2) In this section, “documents of title” means a grant, a certificate of title, a registered charge under section 46 or a lease.</p> <p>(3) A charge created by the deposit of documents when registered shall render subject to the security thereof the same property as would have been affected by an equitable mortgage had the lands comprised in the charge not been registered under this Act and had the transaction been effected by an equitable mortgage instead of by that charge.</p>
Discharge of charge by deposit of documents.	67. A charge by way of deposit of documents may be discharged only by an instrument in writing in form V in the First Schedule, which shall be registered, and no discharge may be effected in any way other than as specified in this section, except by an order of the court directing a registrar as prescribed by section 64.

68. Subsections (1) and (2) of section 66, and section 67, shall be deemed to have come into operation on the 21st January, 1920, and every subsisting Memorandum of Lien registered under section 66* before the 15th December, 1931, shall have effect as if a Memorandum of Charge in form U in the First Schedule had been registered under section 66.

Commencement of certain sections.

69. Where any person who, if not under disability, might have made any application, given any consent, done any act or been party to any proceeding under this Act is a minor, idiot or lunatic or of unsound mind, the representative of that person, or if there is no representative then a person specially appointed by the court to represent that person for the purpose of this Act, may make such application, give such consent, do such act and be party to such proceeding as that person, respectively, if free from disability, might have made, given, done and been party to, and shall otherwise represent that person for the purpose of this Act.

Representatives to act as principals.

70. (1) Upon the application of any proprietor of land held under separate grants or certificates of title or under one grant or certificate of title, and the delivering up of the grant or grants, certificate or certificates of title, the registrar may issue to the proprietor a single certificate of title for the whole of the land, or several certificates each containing a portion of the land in accordance with the application, and as far as this may be done consistently with any Act for the time being in force respecting the subdivisions of grants that may be included in one certificate of title or respecting the subdividing of the grants.

Combinations and subdivisions.

(2) Upon issuing a certificate of title, the registrar shall enter on the new certificate all the memorials to which the piece of land is at the time subject, and shall cancel the grant or previous certificate of title of the land so delivered up, and shall endorse thereupon a memorandum setting forth the occasion of the cancellation and referring to the certificate of title so issued.

71. In the event of a grant or certificate of title being lost or destroyed, the proprietor of the land, together with other persons, if any, having knowledge of the circumstances, may make a declaration, stating the facts of the case, the names and descriptions of the registered owners and the particulars of all changes and other matters affecting the land and the title thereto to the best of the declarant's knowledge and belief, and the registrar, if satisfied as to the truth of that declaration and the bona fides of the transactions, may issue to the proprietor of the

Loss of title.

* i.e. section 66 as numbered in the 1926 Edition of the laws. The section read as follows—

66. No lien may be created by the deposit of documents of title to land under this Ordinance unless evidenced by an instrument in writing in Form U in the First Schedule and registered.

land a provisional certificate of title which shall contain an exact copy of the original grant or certificate of title bound up in the register, and of every memorandum and endorsement thereon, and shall also contain a statement why the provisional certificate is issued; and the registrar shall, at the same time, enter in the register notice of the issuing of the provisional certificate, and the date thereof, and why it was issued, and the provisional certificate shall be available for all purposes and uses for which the grant or certificate of title so lost or destroyed would have been available and as valid to all intents as the lost grant or certificate:

Provided that the registrar, before issuing a provisional certificate, shall give at least ninety days' notice in the Gazette of his intention so to do.

Express declaration to negative implied agreements.

72. Every agreement and power to be implied in an instrument by virtue of this Act may be negated or modified by express declaration in the instrument or endorsed thereon, and every implied agreement shall have the same force and effect as if it had been set out at length in the instrument, and, where any transfer or other instrument in accordance with the provisions of this Act is executed by more parties than one, the agreements which are by this Act to be implied in instruments of the same nature shall be construed to bind the parties severally.

Use of proprietor's name.

73. The proprietor of any land or of any lease or charge shall, on the application of any beneficiary or person interested therein, and on receiving proper indemnity, be bound to allow his name to be used by the beneficiary or person in any proceeding which it may be necessary or proper to bring or institute in the name of the proprietor concerning that land, lease or charge, or for the protection or benefit of the title vested in the proprietor, or of the interest of the beneficiary or person.

Advocates only can sue for fees.

74. No person other than an advocate may sue for or receive any fees, costs or charges, or have any fees, costs or charges in any action brought against that person for work and labour done or money expended in reference to applications, transfers, instruments or other proceedings relating to and under this Act, or have any lien or right to retain any paper or writing which has come into his possession in reference to the proceedings.

Jurisdiction of court remains.

75. Nothing contained in this Act shall take away or affect the jurisdiction of the court on the ground of actual fraud.

Transfers under statutory powers.
23 of 1959, s. 19.

O.i. C & A.A.

76. No transfer by a chargee on a sale under any statutory power of sale shall be registered unless the instrument of transfer refers to the power under which it is made, and if a transfer be made in professed exercise of the mortgagee's statutory power of sale conferred by the Transfer of Property Act, 1882, of India, the registrar may register the

transfer without evidence that that power has been duly and properly exercised.

77. No registrar nor any person acting under the authority of a registrar shall be individually liable to any action or proceedings for or in respect of any act or matter bona fide done or omitted to be done in the exercise or supposed exercise of the powers of this Act.

78. Whenever in any action or other proceeding affecting the title to land it becomes necessary to determine the fact whether the transferee, chargee or lessee is a purchaser or transferee for valuable consideration or not, any person who is a party to the action or other proceeding may give in evidence any transfer, charge, lease or other instrument affecting the title to the land, although it may not be referred to in the certificate of title or may have been cancelled by the registrar.

79. Any person desiring information may apply either—

- (a) in person at the Registry of Titles and, on completion of the prescribed form and on payment of the prescribed fee, may inspect the register relating to the title or instrument specified in the form; or
- (b) by post on the prescribed form and on payment of the prescribed fee, and the registrar shall then complete and return to the applicant a postal search certificate limited to the matters mentioned in the form.

PART XVII—TRUSTS

80. (1) Subject to the provisions hereinafter contained as to land held upon trust for sale and as to registration of caveats, neither the registrar nor in the absence of actual fraud any other person dealing with land registered subject to this Act shall be affected with notice of a trust express, implied or constructive, and the registrar shall not enter in the register particulars of any such trust or register any instrument setting out the terms of a trust.

(2) Mere knowledge that any such trust is in existence shall not of itself be imputed as fraud.

81. (1) Where land registered under this Act is subject to a trust for sale express or implied, whether or not there is a power to postpone the sale, the land shall be registered in the names of the trustees for sale.

Personal liability of registrar.

Proof of transfer for valuable consideration.

Searches.
23 of 1959, s. 20.

Registrar or person dealing with land not to be affected with notice of trust.

Registration of land subject to trust for sale.

(2) Where by virtue of any Act land registered under this Act is made subject to a trust for sale, the land shall be transferred in form F in the First Schedule to the trustees for sale (unless already registered as proprietors), and in the event of the registered proprietor refusing to execute a transfer or his execution of a transfer being unobtainable or only obtainable after undue delay or expense the trustees for sale shall apply to the registrar in writing signed by themselves or by their advocate for registration as proprietors.

(3) Where an application is made under subsection (2), the registrar may—

- (a) after due notice under this subsection to the registered proprietors;
- (b) on production of the grant or certificate of title unless the registrar dispenses with its production; and
- (c) on such other evidence as he may deem sufficient that the land is by virtue of a specified Act made subject to a trust for sale and that the applicants are the trustees thereof,

make such entry in or correction of the register as under the circumstances he deems fit for the purpose of vesting the registered land in the trustees for sale.

(4) Where on an application under subsection (2) the registrar refuses to make the entry in or correction of the register, the person claiming to be trustee for sale may apply to the court by originating summons or by plaint for a vesting order to be made accordingly:

Provided that any costs and expenses incurred by the application to the court shall not be given against the registrar.

Mode of placing restrictions on transferring, charging or disposing of land subject to trust.

82. (1) Where the registered proprietor of any land made or about to be made subject to a trust for sale desires to place restrictions on transferring or charging the land or on disposing of or dealing with the land in any manner in which he is by this Act authorized to dispose of or deal with it or on the deposit by way of charge of any documents of title to the land, the registered proprietor may apply, in form W in the First Schedule, to the registrar to make an entry in the register that no dealing to which the application relates shall be effected unless the following things or such of them as the registered proprietor may determine are done—

- (a) unless notice of any application for the dealing is transmitted by post to such address as he may specify to the registrar;

(b) unless the consent of some person or persons to be named by the registered proprietor is given to the dealing; and

(c) unless some other matter or thing is done as may be required by the applicant and approved by the registrar.

(2) The registrar shall thereupon, if satisfied of the right of the applicant to give the directions and upon payment of the prescribed fee and production of the grant or certificate of title for endorsement, enter the requisite restriction on the register, and no dealing to which the restriction relates shall be effected except in conformity therewith, but the registrar need not enter any restriction that he may deem unreasonable or calculated to cause inconvenience.

(3) In the case of there being more than one registered proprietor, the restriction may be to the effect that when the number of registered proprietors is reduced below a certain specified number no dealing shall be registered except under an order of the court.

(4) Any such restrictions, except those provided for under subsection (3), may at any time be withdrawn or modified, in form X in the First Schedule, at the instance of all persons for the time being appearing by the register to be interested in the restrictions, and shall also be liable to be set aside by an order of the court.

(5) Nothing in this section shall in any way affect or derogate from the general right of registration of caveats otherwise conferred by this Act.

PART XVIII—PENALTIES

83. If any person wilfully makes any false statement or declaration in any dealing in land, or suppresses or conceals, or assists or joins in or is privy to suppressing, withdrawing or concealing, from the registrar any material document, fact or matter of information, or wilfully makes any false declaration required under the authority or made in pursuance of this Act, or if any person, in the course of his examination before the court or the registrar, wilfully or corruptly gives false evidence, or if any person fraudulently procures or is privy to the fraudulent procurement of any certificate of title or instrument or of any entry in the register, or of any erasure or alteration in any entry in the register, or wrongly misleads or deceives any person authorized by this Act to require explanation or information in respect to any land or the title to any land under the operation of this Act, or in respect to which any dealing or transmission is proposed to be registered, that person shall be guilty of an offence and liable to a fine not exceeding six thousand shillings, or to imprisonment for a term not exceeding three years.

Giving false evidence or concealing evidence.

Forgery.

84. If any person commits any of the following acts—

- (a) forges, or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature or handwriting of any officer of the registry office, in cases where that officer is by this Act expressly or impliedly authorized to affix his signature;
- (b) stamps, or procures to be stamped, or assists in stamping, any instrument or document with any such forged seal;
- (c) forges, or procures to be forged, or assists in forging, the name, signature or handwriting of any person to any instrument or document which is by this Act or in pursuance of any power contained in this Act expressly or impliedly authorized to be signed by that person;
- (d) uses with an intention to defraud any person any instrument or document upon which any impression or part of the impression of any seal of the registrar has been forged, knowing it to have been forged, or any instrument or document the signature to which has been forged, knowing it to have been forged;
- (e) fraudulently uses, or procures to be used, for any purpose the actual seal of the registrar, in which case the fraudulent use shall constitute the same offence in all respects as a forgery thereof,

he shall be guilty of an offence and liable to imprisonment for a term not exceeding seven years.

Conviction not to affect private remedy.

85. No proceeding or conviction for any act hereby made punishable shall affect any remedy which any person aggrieved or injured by that act may be entitled to against the person who has committed the act, or against his estate.

PART XIX—RULES

Rules.
23 of 1959, s. 21.

86. The Minister may make rules for the purposes of regulating any matter or thing to be done under this Act, including the prescribing of forms and of fees either in lieu of or in addition to those prescribed in the First and Second Schedules, and generally for the better carrying out of the provisions of this Act.

FIRST SCHEDULE

L.N. 380/1960.

Form A

Application to bring land under the operation of the Act (section 6)

To the Registrar General.

I, apply to have the land hereinafter described brought under the operation of the Registration of Titles Act, and I make oath and say as follows:

1. That I am the person inscribed in the Register Book provided for by the Registration of Documents Act or the Land Titles Act or the Government Lands Act as owner or lessee from the Government of all that piece of land being [number], which land contains approximately..... acres, and is described in the Register Book, Vol. Folio.....

2. That I am not aware of any mortgage or encumbrance affecting the said land or that any other person has any estate or interest therein whatsoever. [If there are any, add other than as follows.....]

3. That I estimate the fair market value of the land excluding improvements to be

Sworn at
thisday of....., 19

Before me,

.....

Form B (1)

Grant for Land (section 21)

Grant No.

Annual Rent: Sh.

Term:

Know all men by these presents that.....

.....

the President and Commander-in-Chief of the Armed Forces of the Republic of Kenya on behalf of.....under and by virtue of the powers vested in him hereby grants unto(hereinafter called "the Grantee") ALL that piece of land situatedin theDistrict of Kenya containing by measurementacres or thereabouts, that is to say Land Reference Numberwhich piece of land with the dimensions abutts and boundaries thereof is delineated on the plan annexed hereto and more particularly on Land Survey Plan Number.....deposited in the Survey Records Office, Survey of Kenya, Nairobi, TO HOLD for the term ofyears from theday of....., 19.....

SUBJECT to—

- (a) the payment in advance of the first day of January in each year of the annual rent of Sh.;
- (b) the provisions of theAct; and
- (c) the following Special Conditions—

SPECIAL CONDITIONS

In witness whereof I have here—
 unto set my hand and the public
 seal of Kenya at
 this day
 of One thousand
 nine hundred and



Registered No.
 Presented
 Time

.....
Registrar of Titles.

Form B (2)

Grant for Land (section 21)

Grant No.

Know all men by these presents that.....

.....the President
 and Commander-in-Chief of the Armed Forces of the Republic of Kenya on
 behalf of.....under and by virtue of the powers
 vested in him hereby grants unto.....(hereinafter called
 "the Grantee") ALL that piece of land situate.....in
 theDistrict of Kenya containing by measurement
acres or thereabouts, that is to say Land Reference
 Numberwhich piece of land with the dimensions
 abutts and boundaries thereof is delineated on the plan annexed hereto and
 more particularly on Land Survey Plan Number.....
 deposited in the Survey Records Office, Survey of Kenya, Nairobi, TO HOLD
 the same in fee simple SUBJECT to—

- (a)[prior restrictions, etc., brought forward];
- (b) the provisions of theAct; and
- (c) the following Special Conditions—

SPECIAL CONDITIONS

In witness whereof I have here-
unto set my hand and the public
seal of Kenya at
this day
of One thousand
nine hundred and

{

Registered No.
Presented
Time

.....
Registrar of Titles.

Form C

Certificate of Title (sections 10 and 22)

Registration District of

CERTIFICATE OF TITLE

Register Vol. Folio
..... of [insert description, and, if certificate is used
pursuant to any transfer, reference to transfer] is now proprietor as owner
in fee subject to such encumbrances as are notified by memorandum written
hereon and to the provisions of the (insert title of Act) and situated in the [insert
sufficient description to identify the land, referring to map or diagram and to
the original grant thereof].

In witness whereof, I have hereunto signed my name and affixed my
seal.

.....
Registrar of Titles.

(Endorse memorandum of encumbrances)

Form D

Certificate of Title (sections 10 and 22)

Registration District of

Annual Rent of Sh. cts.....

CERTIFICATE OF TITLE

Register Vol. Folio

..... of [insert description, and, if certificate is used pursuant to any transfer, reference to transfer] is now proprietor as lessee from the Government for the term expiring on of that piece of land containing [insert area] and situated in the [insert sufficient description to identify the land, referring to map or diagram and to the original document of title therefore] subject to the provisions of [insert title of Act] and subject to such special conditions and such encumbrances as are notified by memorandum written hereon, and subject to the payment of the annual rent of Sh. cts.....

In witness whereof, I have hereunto signed my name and affixed my seal this.....day of....., 19.....

.....
Registrar of Titles.

[Endorse memorandum of special conditions and encumbrances.]

Form E

Caveat Forbidding Land to be Brought under the Registration of Titles Act (section II)

To the Registrar of Titles.

Take notice that I [name and address] claim [particularize interest claimed] in the land described [copy description from the advertisement] in the advertisement relating to the application of [state applicant's name], and I forbid the bringing of that land under the operation of the Registration of Titles Act. I appoint as the place at which notices and proceedings relating hereto may be served.

Signed in the presence of } [Signature]

[Stamp.]

Form F

Transfer (sections 34 and 81)

I,being registered as the proprietor (subject, however, to such charges, leases and encumbrances as are notified by memorandum endorsed hereon, and to the annual rent of Sh. cts.) of all that piece of land containing [state area] or thereabouts, and situated in the.....[exclusively of roads intersecting the same, if any] [state rights-of-way, privileges or easements, if any, intended to be conveyed, and if any land to be dealt with contains all that is included in an existing grant, refer thereto for description of parcels and plan; otherwise set forth the boundaries in feet, and refer to plan delineated in the margin or annexed to the instrument or deposited in the] in consideration of the sum of £ Sh. cts. paid to me by, the receipt of which sum I hereby acknowledge, do hereby transfer to the said all my right, title and interest in the said piece of land.

In witness whereof I have hereunto subscribed my name this.....
day of, 19

Signed in the presence of] [Signature]

[Endorse memorandum of charges & leases]

[Stamp.]

Form G

Transfer of Charge or Lease (section 37)

I,, owner of a charge [or lease] of certain land containing acres, situated at and known as and described in the register of Government grants [or certificates of title], book....., folio, and is herewith presented in consideration of the sum of Sh. this day paid to me by of the receipt of which sum I hereby acknowledge, do hereby transfer to the said the charge [or lease].

In witness whereof I have hereunto subscribed my name, this.....
day of, 19

..... [Transferor]
Accepted [Transferee]

The signature [*transferor*] was
made in my presence the
..... day of, 19,
and I verily believe that such
signature is of the proper
handwriting of the person
described as

The signature [*transferee*] was
made in my presence the
..... day of, 19,
and I verily believe that such
signature is of the proper
handwriting of the person
described as

[Stamp].

Form H

Lease (section 40)

I,*being registered as the proprietor [lessee]* (subject to such charges as are notified by memorandum written hereon, and to the annual rent of £ Sh.cts)
of that piece of land containing [*state area or thereabouts*] and situated in [*if the land to be dealt with contains all that is included in an existing grant or certificate of title, or lease, refer thereto for description and diagram; otherwise set forth the boundaries in feet, and refer to a plan thereof or annexed to the lease, or deposited in the*
.....] do hereby lease to of
[*insert description*] that the said piece of land to be held by him, the said
....., as tenant, for the space of
years [*state the date and term*] at the yearly rental of £..... Sh.cts
payable [*insert terms of payment of rent*] subject to the following
modifications [*set forth any modification*].

I,*of [insert description]*, do
hereby accept this lease subject to the conditions, restrictions and stipulations
above set forth or referred to.

..... [*Signature of Lessee*].

..... [*Signature of Lessor*].

Signed by the said Lessee in the presence of

Signed by the said Lessor in the presence of

[*Endorse memorandum of charges*]

Form I

*Short Forms of Covenants for Leases (Section 42)**Column one**Column two*

1. The lessee will not sublet.	1. The lessee, his executors, administrators or transferees will not during the said term transfer, assign or sublet the premises hereby leased or any part thereof or otherwise by any act or deed procure the said premises or any part thereof to be transferred, assigned or sublet without the consent in writing of the lessor or his transferees first had and obtained.
2. The lessee will cultivate.	2. The lessee, his executors, administrators or transferees will at all times during the said term cultivate, use and manage in a proper and husbandlike manner all such parts of the land as are now or shall hereafter with the consent in writing of the said lessor or his transferees be broken up or converted into tillage and will not impoverish or waste the same.
3. The lessee will not cut timber.	3. The lessee, his executors, administrators or transferees will not cut down, fell, injure or destroy any growing or living timber or timberlike trees standing and being upon the said land without the consent in writing of the said lessor or his transferees.
4. The lessee will paint outside every year	4. The lessee, his executors, administrators or transferees will in every year during the continuance of the said term paint the outside woodwork and ironwork belonging to the leased property now or usually painted with two coats of proper oil-colours in a workmanlike manner and also whiten or colour such parts of the said premises as are now whitened or coloured respectively.
5. The lessee will paint inside every..... year	5. The lessee, his executors, administrators or transferees will in every year during the continuance of the said term paint the inside wood, iron and other work now or usually painted with two coats of proper oil-colours in a workmanlike manner and also whiten or colour such inside parts of the said premises as are now whitened or coloured respectively.
6. The lessee will not use the premises as a shop.	6. The lessee, his executors, administrators or transferees will not convert, use or occupy the said premises or any part thereof into or as a shop, warehouse or other place for carrying on any trade or business whatsoever or permit or suffer the said premises or any part thereof to be used for any such purpose or otherwise than as a private dwelling-house without the consent in writing of the said lessor or his transferees.

Form I—(Contd.)

Column one

7. The lessee will not carry on an offensive trade.

8. The lessee will fence.

9. The lessee will insure against fire in the name of the lessor.

Column two

7. The lessee, his executors, administrators or transferees will not at any time during the said term use, exercise or carry on or permit or suffer to be used, exercised or carried on in or upon the said premises or any part thereof any noxious, noisome or offensive act, trade, business, occupation or calling and no act, matter or thing whatsoever shall at any time during the said term be done in or upon the said premises or any part thereof which shall or may be or grow to the annoyance, nuisance, grievance, damage or disturbance of the occupiers or owners of the adjoining lands and properties.

8. The lessee, his executors, administrators or transferees will during the continuance of the said term erect and put up on the boundaries of the said land or on those boundaries upon which no substantial fence now exists a good and substantial fence.

9. The lessee, his executors, administrators or transferees will insure and during the said term keep insured against loss or damage by fire in the name of the lessor or his transferees in some public insurance office approved of by him or them to the amount of their full value all buildings which shall for the time being be erected on the said land and which shall be of a nature or kind capable of being insured against by fire and will when required deposit with the lessor or his transferees the policy of such insurance and within seven days after each premium shall become payable the receipt for such premium, and on any breach or non-observance of this covenant the lessor or his transferees may, without prejudice to and concurrently with the powers granted to him and them by this lease, insure such buildings and the costs of effecting such insurance shall during the said term be a charge upon the said land. All moneys which shall be received under or by virtue of any such insurance shall be laid out and expended in making good the loss or damage.

Form J (1)

Charge (section 46)

I, being registered as the proprietor [*lessee*], subject to such charges as are notified by memorandum written hereon, and to the annual rent of Sh.....cts of that piece of land containing [*state area*] or thereabouts, and situated in [if the land to be dealt with contains all that is included in an existing grant or certificate of title or lease, refer thereto for description or diagram; otherwise set forth the boundaries in feet, and refer to plan thereof on margin of or annexed to the charge, or deposited in the] in consideration of the sum of Sh.....cts lent to me by of [*insert description*], the receipt of which sum I hereby acknowledge, do hereby agree:

First that I will pay to him the said the above sum of Sh on the day of :

Secondly that I will pay interest on the said sum at the rate of Sh. per centum per annum by equal payments of Sh. cts., on the day of every [*insert month or quarter or half-year or year*], the first of such payments to be made on the day of next:

Thirdly [*set forth special stipulations if any*]. And, for the better securing to the said the repayment in manner aforesaid of the principal sum and interest, I hereby charge the land above described with such principal sum and interest.

In witness whereof I have hereunto signed my name this day of 19....

Signed by the said } [Signature]
in the presence of

[Endorse memorandum of charges]

Form J (2)

Charge (section 46)

I, being registered as the proprietor [*lessee*], subject to such charges as are notified by memorandum written hereon, and to the annual rent of Sh.cts of that piece of land containing [*state area*] or thereabouts and situated in [if the land to be dealt with contains all that is included in an existing grant or certificate of title, refer thereto for description and diagram; otherwise set forth the boundaries in feet and refer to plan thereof on margin or annexed hereto, or deposited in the], and desiring to render the said land available for the purpose of securing to and for the benefit of [*the sum of money, annuity or rent charge*] hereinafter mentioned, do hereby charge the said land for the benefit of the said with the sum [*or annuity or rent charge*] of Sh. to be raised and paid at the times and in the manner following, that is to say

[state the times appointed for the payment of the sum, annuity or rent charge intended to be secured, the interest, if any, and the events on which such sum, annuity or rent charge shall become and cease to be payable, also any special agreements or powers].

Signed by the above-named in } [Signature]
the presence of

Form K

*Short Form of Covenant to Insure against Fire in
the Name of Chargee*

Column one

That I will insure
against fire in the
name of the chargee.

Column two

That I, my heirs, executors, administrators or
transferees will insure and so long as any money
shall remain secured by this charge keep insured
against loss or damage by fire in the name of
the chargee or his transferees in some public
insurance office to be approved of by him or
them all buildings which shall for the time being
be erected on the said land, and shall be of a
nature or kind capable of being so insured to the
amount of the full value of such buildings and
will when required deposit with the chargee or his
transferees the policy of such insurance and within
seven days after each premium shall become
payable the receipt for such premium. And that
the moneys by which shall be received on account
of such insurance shall at his or their option be
applied either in or towards satisfaction of the
moneys secured by this mortgage or in rebuilding
or reinstating under the superintendence of
his or their surveyor the buildings destroyed
or damaged. And that in any breach or non-
observance of this covenant he or they shall be at
liberty to effect such insurance and continue the
same for such period as may be deemed fit and the
costs and expenses paid on account thereof shall
be a charge upon the said land and bear interest
at the same rate as if principal money overdue.

Form L

Certificate to be Given by Officer of Court on the Sale of Land at the Instance of a Chargee

Whereas upon the day of last it was ordered by a judge under the authority of the Registration of Titles Act that the following lands, viz.: [describe land] containing acres or thereabouts and being the [whole or part] of the lands contained in the [grant or certificate of title] registered in the register of book folio should be sold by public auction. And whereas the said lands were duly sold by public auction before me at on the day of, 19..... And whereas at such auction was the highest bidder, and I caused the said lands to be knocked down to him at the bid of Sh. the receipt of which sum from the said I hereby acknowledge: Now I do hereby transfer the said land to the said subject to the annual rent and charges hereunder written:

Dated this day of, 19

[Signature]

Form M

Power of Attorney (section 50)

I,, do hereby appoint my attorney to sell to any person all or any lands, leases and charges whether now belonging to me or which shall hereafter belong to me under or by virtue of the Registration of Titles Act or of which I am now or shall hereafter be the proprietor under that Act; also to charge all or any such lands or leases for any sum at any rate of interest; also to lease any such lands for any term of years, not exceeding twenty-one years in possession, at any rent; also to surrender or obtain or accept the surrender of any lease in which I am or may be interested; also to exercise and execute all powers which are now or shall hereafter be vested in or conferred on me as a lessee or chargee under the said Act [*or otherwise according to the nature and extent of the powers intended to be conferred*], and for me, and in my name, to sign all such transfers and other instruments and to do all such acts, matters and things as may be necessary or expedient for carrying out the powers hereby given and for recovering all sums of money that are now or may become due or owing to me in respect of the premises, and for enforcing or varying any contracts, agreements or conditions binding upon any lessee, tenant or occupier of the said lands, or upon any other person in respect of the same, and for recovering and maintaining possession of the said lands and for protecting the same from waste, damage or trespass.

Dated this day of, 19

Signed by the said
in the presence of } [Signature]

Form N

Revocation of Power of Attorney (section 51)

I,, of, hereby
revoke the power of attorney given by me to dated
the day of, 19

Signed by the said
in the presence of } [Signature]

Form O (I)

Transfer of Land under Warrant of Execution (section 55)

I, , the person appointed to execute the warrant hereinafter mentioned in pursuance of a warrant of execution dated the day of , 19..... , and issued out of the court in an action wherein is the plaintiff and the defendant, which said is registered as the proprietor of the land hereinafter described, subject to the charges and to the annual rent notified hereunder, do hereby, in consideration of the sum of Sh. paid to me by , transfer to the said all that piece of land [insert a sufficient description of the land and refer to the debtor's certificate of title or grant].

Dated the day of, 19

Signed by the said } [Signature of officer]
in the presence of } executing warrant

Signed by the said } [Signature of transferor]
in the presence of } [Signature of transferee]

[Charges and rent referred to]

Form O (II)

Transfer of Lease or Charge under Warrant of Execution

I, the person appointed to execute the warrant hereinafter mentioned [*or otherwise as the case may be*] in pursuance of a warrant of execution dated the day of 19....., and issued out of the court in an action wherein is the plaintiff and the defendant, which said is registered as the proprietor of a lease [*or charge, as the case may be*] number..... of [*or upon*] the land hereinafter described subject to the charges and rent notified thereunder, do hereby, in consideration of the sum of Sh. paid to me by, transfer to the said the lease [*or charge*] granted by to and in favour of dated the day of to, in or over [*describe the land according to the description in the lease or charge and refer to the registered instrument*].

Dated the day of, 19

Signed by the said } [Signature of officer]
in the presence of } [executing warrant]

Signed by the said } [Signature of transferee]
in the presence of }

[Charges and rent referred to]

Form O (III)

Transfer of Land under Order of Court

I, in pursuance of an order of the court dated the day of, 19, and entered in the Register Vol. Fol. hereby transfer to, subject to the charges and annual rent notified hereunder, all that piece of land being [*insert a sufficient description of the land and refer to the certificate of title or grant*].

Dated the day of,
19

Signed by the said } [Signature of transferor]
 in the presence of

Signed by the said } [Signature of transferee]
 in the presence of

[Charges and rent referred to]

Form O (IV)

Transfer of Lease or Charge under Order of Court

I,, in pursuance of an order of the court dated day of, 19, and entered in the Register..... Vol. Fol., hereby transfer to, subject to the charges and annual rent notified hereunder, the lease [or charge, as the case may be] granted by in favour of of [or upon] all that piece of land [insert description of the land according to the description in the lease or charge and refer to the registered instrument].

Dated the day of,
 19

Signed by the said } [Signature of transferor]
 in the presence of

Signed by the said } [Signature of transferee]
 in the presence of

[Charges and rent referred to]

Form O (V)

Transfer of Land by President on Sale for Arrears of Land Revenue

I,, President of Kenya, in pursuance of a notice of sale under section of the Government Lands Act, and entered in the Register Vol. Fol., hereby transfer to, subject to the charges and annual rent specified hereunder, all that piece of land [insert description of the land and refer to certificate of title or grant].

Dated the day of, 19

Signed by the said }
in the presence of } [Signature]

Signed by the said }
in the presence of } [Signature]

[Charges and rent referred to]

Form P

Caveat Forbidding Registration of Dealing with Land (section 57)

To: The Registrar of Titles,
Land Registry, Nairobi/Mombasa.

TAKE NOTICE that I,
of
(at which address within Kenya notices may be served), claiming
(1).....
.....
..... in (2).....
.....
.....
forbid the registration of any dealing with the said land—

(a) absolutely, or

(b) unless the transaction be expressed to be subject to the claim of
the caveator (3).

Dated this day of, 19

[Signed]

I, of
make oath and say/affirm (3) that to the best of my knowledge and belief the
claim above referred to is true.

Sworn at

this day of, 19

Before me,

.....
(1) Nature of registrable interest claimed in land.

(2) Particulars of land.

(3) Delete whichever is not applicable.

Form Q

Reference to the Court (section 63)

In the court of
Date

In the Matter of the Registration of Transfer [*or as the case may be*]
A.B. to C.D.

The Registrar under section of the Registration of Titles Act
hereby humbly refers the following matter to the Court, to wit [*state briefly
the difficulty which has arisen*]. The parties interested, so far as the Registrar
knows or has been informed, are [*give names*].

.....
Registrar of Titles.

Form R

Summons (section 65(1))

In the Matter of the Registration of Titles Act.

A.B. is hereby summoned to appear before me at the
on the day of, 19,
at of the clock in the noon, then and there to be examined
at the instance of C.D. concerning, and the said A.B. is hereby
required to bring with him and produce at the time and place aforesaid [*describe
documents*], and all other writings and documents in his custody and power in
any wise relating to the premises.

Given under my hand the day of, 19.....

.....
Registrar of Titles.

Form U

Memorandum of Charge by Deposit of Document of Title (section 66)

TITLE NUMBER

Document of Title registered as No.
relating to Land Reference Number
was deposited by
of P. O. Box No. [*Chargor*]
with

.....

of P. O. Box No. [Chargee]
by way of charge on the day of 19

The chargor and chargee hereby certify, in accordance with the provisions of section 68 (3) of the Stamp Duty Act, that the amount hereby secured is Sh. /uncertain, and the chargee acknowledges to have received the document of title.

Dated this day of 19

Signed in the presence of :—	Signature or Common Seal of Chargor:—
Postal address.....
Description
Signed in the presence of :—	Signature or Common Seal of Chargee:—
Postal address.....
Description
Drawn by:—

Form V

*Memorandum of Discharge of Charge by Deposit of Document of Title
(section 67)*

TITLE NUMBER

The charge by deposit of document of title registered as No.
was discharged on the day of 19, in so far as it relates to
Land Reference Number

It is hereby certified that—

- (a) the greatest amount at any time thereby secured was Sh.
.....
- (b) this is a partial discharge.

Dated this day of 19

Signed in the presence of :—	Signature or Common Seal of Chargee:—
Postal address
Description
Drawn by:—

Form W

Application to Register a Restriction (section 82)

To the Registrar of Titles.

Take notice that I, the registered proprietor of.....

....., hereby apply to enter the following restriction against Title No.

Restriction:

Dated the day of, 19

Signed in the presence of :

..... [Signed]

Form X

Application to Withdraw or Modify a Restriction (section 82 (4))

To the Registrar of Titles.

Take notice that I,, of, hereby apply to withdraw [or modify] the restriction registered on [date] against Title No.

Dated the day of 19

Signed in the presence of :

..... [Signed]

SECOND SCHEDULE

L.N. 301/1994,
L.N. 52/208,
L.N. 6/2010.

FEES PAYABLE FOR THE PERFORMANCE OF THE SEVERAL ACCOUNT,
MATTERS AND THINGS HEREIN SPECIFIED

	<i>Fees KSh.</i>
(a) On making an application to bring land under the operation of the Act for every KSh. 10,000 or part thereof, of the unimproved value of the land	1,000
(b) For every instrument presented for registration	500
(c) For every notice (excluding notice given on registration of caveat)	250
(d) Taking any declaration or affidavit	500
(e) For making an entry in or correction of the register under section 81 (3) of the Act	500
(f) For entering a restriction under section 82 (2) of the Act	500
(g) For entering a withdrawal of or modification of a restriction under section 82 (4) of the Act	500
(h) For preparation of a certificate of title	1,000
(i) On appeal to the Registrar from an order refusing to register a document under section 33 of the Act	1,000
(j) For attendance by an officer of the Registry at a place outside the Registration office	1,000
(k) For every application for a provisional certificate under section 71 of the Act	1,000
(l) For attestation by the Registrar under section 58 of the Act	500
(m) For every personal search	1,000
(n) For every postal search	500
(o) On resubmission of any instrument previously rejected because of an error therein or failure to comply with any prerequisite of registration	500

(p) For every copy of a registered instrument or abstract folio—

- (i) Where the number of pages or folios does not exceed five 200 per copy of such pages or folios
- (ii) Where the number of pages or folios exceeds five 200 per copy of the first five pages or folios plus KSh. 10 per page or folio in excess of the said five pages or folios

(q) For any act or thing not otherwise provided for 500

3. The fees prescribed in these Rules include the provision of photostatic copy prescribed by the Act.

4. Government miscellaneous receipts shall be issued upon payment of the fees prescribed in these Rules.

5. The Registration of Titles (Fees) Rules, 2008, are revoked.

SUBSIDIARY LEGISLATION**Division of Kenya into Registration Districts under section 4**

Cap.160 (1948).
Sub. Leg.

Kenya has been divided into two registration districts, as follows—

(a) the Coast District, comprising the Coast Province;

(b) the Inland District, comprising the rest of Kenya.

Rules under section 86**THE REGISTRATION OF TITLES (FORMS) RULES**

L.N. 380/1960,
L.N. 164/1976,
L.N. 66/1991.

1. These Rules may be cited as the Registration of Titles (Forms) Rules.

2. Forms P (1), P (2), P (3), Q (1), S, S (1), T, Y and Z in the Schedule to these Rules shall be used in all cases under the Act.

3. The Registrars of Titles at Nairobi and Mombasa shall keep a supply of forms P, P (1), P (2), P (3), S, S (1), T, U, V, Y and Z for the use of the public.

4. The fees payable in all matters connected with the forms mentioned in rules 2 and 3 wherever applicable of the principal Rules shall be those prescribed by the Minister in the Gazette.

5. (1) The Registrars of Titles shall cause to be impressed on all applications on which fees are paid and on all copies thereof a stamp recording the date and time of presentation in such manner (in the case of the original) as to cancel the stamps affixed in payment of fees.

(2) The impression shall in the absence of fraud be conclusive evidence of the date and time of presentation and that the fees stated in the application to have been paid, have been paid.

SCHEDULE

(r. 2)

Form P (1)

NOTICE OF WITHDRAWAL OF CAVEAT

To: The Registrar of Titles,

Land Registry, Nairobi/Mombasa.
I/We,
of
withdraw the caveat registered as

[Subsidiary]

Signed
Date.....

.....
(*Advocate for)Caveator(s).*

[Subsidiary
L.N. 153/2005.

**THE REGISTRATION OF TITLES (FORMS) AMMENDMENT
RULES, 2005.**

Citation.

1. These Rules may be cited as the Registration of Titles (Forms) (Amendment) Rules, 2005.

Amendment to first
schedule.
L.N. 380/1960.

2. The First Schedule to the Registration of Titles (Forms) (Amendment) Rules, 1960, in these Rules referred to as “the Principal Rules” is amended—

(a) by deleting the attestation clause and substituting therefore the following attestation clause—

Signed by the transferor in the Presence of-	Coloured Photograph
} } } ID/No PIN No Signature	

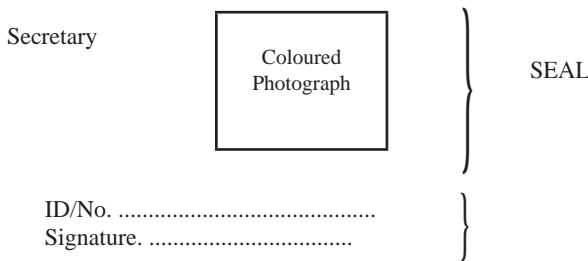
OR

Sealed with the common seal of the Transferor
In the Presence of-

Director	Coloured Photograph	} SEAL
ID/No PIN No Signature		

ID/No.
PIN No.
Signature.

[Subsidiary]



Form P (2)

APPLICATION FOR REMOVAL OF CAVEAT

To: The Registrar of Titles, Our reference:—
 Land Registry, Nairobi / Mombasa.

I/We,
 of
 hereby apply to you to remove the caveat registered as.....

.....
 Adhesive revenue stamps to the value of Sh.
 in payment of fees are affixed hereto.

Signed

Date

.....
 (Advocate for)Caveatee(s).

To be submitted in triplicate.

L.N. 66/1991.

Form P (3)

CAVEAT TO SECURE PAYMENT OF ADDITIONAL
STAMP DUTY

(Section 65 (1) (f) the Act)

Land Reference Number

TAKE NOTICE that pursuant to my powers under the Registration of Titles Act (Cap. 281), I have today entered a caveat against this title on behalf of the Government of Kenya to secure the payment of Sh.
 additional stamp duty on a transfer dated and registered as I.R./C.R.
 as assessed by the Collector of Stamp Duties.

This caveat shall remain registered against the title until such time as additional stamp duty together with penalties incurred for late payment has been paid or an appeal against the assessment by the collector has been upheld.

Signed
Principle Registrar of Titles

Form Q (1)

NOTICE OF APPEAL AGAINST REFUSAL BY A REGISTRAR TO
 REGISTER A DOCUMENT

To: The Registrar General,

Our reference:—

Land Registry, Nairobi.

.....

TAKE NOTICE that I/We
 of P.O. Box
 hereby appeal against the decision of the Registrar set forth in his letter No.
 dated
 refusing to register:—
 Description of Document
 Date of Document
 Parties to Document

 Land Reference Number(s)
 Presented on 19....., by
 My/Our grounds of appeal are as follows:—

(If this space is insufficient please continue on the back)

Adhesive revenue stamps to the value of Sh.
 in payment of fees are affixed hereto.

Date

*Signature of Appellant or his
 Advocate.*

To be submitted in triplicate.

[Subsidiary]

Form S

APPLICATION FOR PERSONAL SEARCH OF:—

*Land Reference
Number*

*Title or Deed File
Number*

Adhesive revenue stamps to the value of the prescribed fee are affixed hereto.

Signature.....

Postal address

Date.....

Deed file checked on completion of search by: -

.....
Counter Clerk's initials.

CONDITIONS

1. This form must be submitted in duplicate with revenue stamps to the value of the prescribed fee affixed to the original, which will be retained in the Land Registry.

2. Persons making searches may take brief notes in pencil but no document shall be copied.

3. In no circumstances may any note or mark be made on any document, file or register produced for inspection.

4. Persons making searches shall check the contents of any deed file produced to them and have it checked by the Counter Clerk, both before and on completion of the search, and obtain his initials on the duplicate search form; otherwise the person searching will be held liable for any document lost or damaged.

5. The Counter Clerk's duty does not extend to answering questions on matters of title and no responsibility is accepted for any opinion which may be expressed by him.

Form S (1)

APPLICATION FOR POSTAL SEARCH

To: The Registrar of Titles, Our reference:—
Land Registry, Nairobi/Mombasa.

APPLICATION is made for a certified copy of the last complete page of the abstract register or register of titles relating to Land Reference Number.....Title/Deed File Number and any subsequent entries.

Adhesive revenue stamps to the value of the prescribed fee is affixed hereto.

Signed.....

Name in capitals.....

Postal address

Date

(For completion in the Registry)

POSTAL SEARCH CERTIFICATE No.

Certified copy forwarded as requested above.



.....
Registrar of titles.

To be submitted in duplicate.

[Subsidiary]

Form T

The conditions on the back of this form shall be complied with.

APPLICATION FOR REGISTRATION

of the undermentioned documents in the following order of priority:—

Date of Document (1)	Description (1)	Land Reference Number (2)	Deed File Number (3)	Fee (4)
				<i>Sh.</i>

Number of new certificates of title required at the prescribed fee

Adhesive revenue stamps affixed hereto to the value of

The following documents are enclosed for endorsement:—(5)

Grant No..... Lease No..... Certificate No.

The following supporting documents are also enclosed:—(6)

Clearance Certificate Estate Duty Certificate “Registration Copy” of Land Control Consent “Registration Copy” of Provincial Commissioner’s Consent Withholding Tax Certificate (W. 70) Land Rent Certificate

.....

The following consents are endorsed on the documents: -

Commissioner of Lands or the Chief Engineer, Kenya Railways

Corporation under the terms of the Grant Chargee to surrender of lease under section 44 of the Registration of Titles Act (Cap. 281)

.....

Special instructions, including, if necessary, the name and address of the person to whom the documents are to be sent if other than the presenter:—

Signature

Name in block capitals

Postal address.....

Date.....

To be submitted in triplicate.

(Reverse)

CONDITIONS

Every document presented for registration must be accompanied by this form.

Application for registration forms are printed in sets of three, each set comprising an original, duplicate and triplicate. Forms may be obtained post free from the Registrar of Titles, Nairobi and Mombasa.

The form must be completed accurately in accordance with these conditions. Failure to do so may result in the rejection of the application. The information supplied by the presentor must appear legibly in English on all three forms. If registration is sought at both the Nairobi and Mombasa Registries, separate applications accompanied by the document must be addressed to each. The following are the explanations of the numbers appearing in brackets on the form:—

- (1) Give a brief description of each document, e.g. Conveyance, Assignment, Transfer, Charge, etc.
- (2) The land reference numbers of all parcels of land dealt with in each document must be entered, e.g. 1870/XX/9. 1870/XX/10. If the document is not to be registered against a title to land, e.g. powers of attorney, building plans, agreements, etc., the word "Nil" must be inserted.
- (3) Where possible the deed file number should be inserted in this column. In the case of titles registered under the Registration of Titles Act (Cap. 281) this is the title number. For titles registered under other Acts, the number of the deed file is shown in the right-hand column of the registration endorsement on the last registered document.
- (4) The registration fee tendered must be entered in this column, and the total fees entered at the foot thereof. The fee payable on presentation is the prescribed fee per entry in the register, and is not refundable. This fee is inclusive of copying. A document purporting to deal with two or more titles will attract the prescribed fee in respect of each title against which it is to be registered.
- (5) All documents presented for registration against titles under the Registration of Titles Act, other than caveats, statutory notifications and Court orders, must be accompanied by the appropriate title deed, and the registration particulars of that deed must be inserted in this paragraph of the form. No documents are required for endorsement under the other Acts.
- (6) Indicate, by placing a tick in the appropriate boxes, the supporting documents which accompany the application or consents

Form to accompany documents.

Number of forms to submit.

How to complete.

[Subsidiary]

which are endorsed on the documents.

Payment of fees.

Fees may only be paid by affixing adhesive revenue stamps to the required value in the space provided on the original application form. Such stamps may be obtained from post offices. Spoilt or damaged adhesive revenue stamps will not be accepted but stamps upon which the presenter has placed his name stamp shall not be deemed spoilt or damaged for this purpose.

Separate applications
be made.

A separate set of application forms must be submitted for each document except in the case of a set of documents which are to be registered against the same title or are related to each other. For example, a discharge of a charge, a surrender of a lease, a transfer and a new charge all relating to L.R. No. 999/999 would properly form the subject of one application, and similarly a power of attorney executed by the registered proprietor followed by a transfer executed by the attorney are related to each other and can form the subject of one application.

Submission of
application.

Applications may be submitted as follows—

- (a) by post to the appropriate Registrar;
- (b) by delivery in the box provided at the appropriate Land Registry;
- (c) by requesting the Collector of Stamp Duties to forward the application form to the appropriate Registrar after stamping the document. Priority is not established until the application is in the hands of the Registrar, and no responsibility is accepted by the Collector for any delay.

Rejections.

Documents re-presented for registration following their previous rejection must be accompanied by a fresh set of forms of application duly completed. The fee in such a case is the prescribed fee for every document which was the subject of a formal rejection.

Form Y

APPLICATION FOR COPY

To: The Registrar of Titles,
Land Registry, Nairobi/Mombasa.
I / We request you to supplycertified/uncertified
copies of the following:—

Our reference:—

Delete if not
applicable.

Adhesive revenue stamps at the rate of Sh. 2 per certified copy are pinned to this application to meet the stamp duty payable thereon.

Adhesive revenue stamps to the value of Sh.
in payment of fees are affixed hereto.

Date Signature
 Insert below in block capitals the name and address in Kenya to which the copy/
 copies is/are to be sent:—
 Name
 Postal address.....

(For completion in the Registry)

The above-mentioned copy/copies is/are forwarded herewith.
 The above request cannot be met because.....

.....

Date.....
Registrar of Titles.

To be submitted in duplicate.

Form Z

APPLICATION FOR PROVISIONAL CERTIFICATE OF TITLE
 PART I

To: The Registrar of Titles, Our reference:—
 Land Registry, Nairobi /Mombasa.

I have lost Grant/Certificate of Title/

No. I.R./C.R. and hereby apply for a Provisional Certificate of
 Title under section 71 of the Act.

2. I attach my statutory declaration as to the matters required by the
 Act.

3. I also attach the statutory declaration of.....

4. I hereby undertake to forward the Grant/Certificate of Title/
 to you immediately should it be found.

5. Adhesive revenue stamps to the value of the prescribed fees
 are affixed hereto.

6. The Provisional Certificate should be sent to me/
 of P.O. Box

Date

[Subsidiary]

Registered Proprietor.

Name in block capitals

.....

Postal address

.....

PART II

To: The above-named applicant:

.....

The Provisional Certificate applied for has been issued and is enclosed herewith.

Date

.....

Registrar of Titles.

To be submitted in duplicate

—————◆—————