

Approved for tabling.



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13/11/19

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- THIRD SESSION (2019)

COMMITTEE ON DELEGATED LEGISLATION

**REPORT ON THE CONSIDERATION OF THE LAND
REGISTRATION (ELECTRONIC LAND TRANSACTIONS)
REGULATIONS, 2019**

(Legal Notice No. 101 of 2019)

NOVEMBER 2019.

	
THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 13 NOV 2019	DAY: WED
TABLED BY:	HON. MURUGARA GITONG'A MP MEMBER, COMMITTEE ON DELEGATED LEGISLATION
CLERK:	A. Shikuku

Directorate of Committee Services
The National Assembly,
Parliament Buildings,
NAIROBI.

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ABBREVIATIONS

CLR	Chief Land Registrar
LN	Legal Notice
LSK	Law Society of Kenya
RMA	Regulatory Making Authority.
SI	Statutory Instruments
SO	Standing Order

CHAIRPERSON'S FOREWORD

In exercise of the powers conferred by section 110 of the Land Registration Act (*No. 3 of 2012*), the Cabinet Secretary for Lands and Physical Planning made and published the **Land Registration (Electronic Land Transactions) Regulations, 2019** vide Legal Notice No.101 of 2019 on 28th June, 2019. The Regulations were received by the Clerk of the National Assembly on 1st August, 2019 and tabled before the House on 6th August, 2019.

The Regulations provide for the procedure of conducting electronic land transactions, electronic submission and registration of documents in all registries where an electronic registry is maintained.

Pursuant to section 16 of the Statutory Instruments Act, 2013, the Committee held a meeting with Ms. Farida Karoney, Cabinet Secretary, Ministry of Lands and Physical Planning on 1st and 2nd November, 2019.

Having examined the Regulations against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Land Registration Act (*No. 3 of 2012*) and the Statutory Instruments Act (*No 23 of 2013*), the Committee recommends to the House the instrument be **annulled in entirety** for various reasons, the main ones being –

- (i) **Contrary to Article 259(11) of the Constitution, consultation with the National Land Commission was not been adequately demonstrated and neither was it stated in the enabling clause.**
- (ii) **The regulation making authority failed to demonstrate that it conducted sufficient public participation in the development of the Regulations, contrary to sections 5 and 5A of the Statutory Instruments Act, 2013.**
- (iii) **The regulation making authority failed to submit a regulatory impact statement as required by sections 6, 7, and 8 of the Statutory Instruments Act, 2013.**
- (iv) **The Regulations were also not submitted to the National Assembly within the statutory timeline contemplated by section 11(1) of the Statutory Instruments Act, 2013.**

I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to section 15(1) of the Statutory Instruments Act, 2013 and Standing Order 210 (4) (b), it is my pleasure and duty to present to the House the Committee's **Report on the Consideration of the Land Registration (Electronic Land Transactions) Regulations, 2019 (Legal Notice No. 101 of 2019).**

HON. GLADYS BOSS SHOLLEI CBS MP

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it:
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the court;
 - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
 - g) it involves expenditure from the consolidated fund or other public revenues;
 - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
 - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises -

Chairperson

Hon. Gladys Boss Shollei CBS MP
Uasin Gishu County Woman Representative

Jubilee Party

Vice- Chairperson

Hon. Fatuma Gedi, MP
Wajir County Woman Representative
Party for Development and Reforms

MEMBERS

Hon. Waihenya Ndirangu, MP
Roysambu Constituency

Jubilee Party

Hon. Alice Wahome, MP,
Kandara Constituency

Jubilee Party

Hon. Robert Mbui, MP
Kathiani Constituency,

Wiper Democratic Movement -Kenya

Hon. Daniel Maanzo, MP
Makueni Constituency

Wiper Democratic Movement -Kenya

Hon. Muriuki Njagagua, MP
Mbeere North Constituency

Jubilee Party

Hon. Timothy Wanyonyi, MP
Westlands Constituency

Orange Democratic Movement

Hon. Ronald Tonui, MP
Bomet Central Constituency

Jubilee Party

Hon. William Kamoti, MP
Rabai Constituency

Orange Democratic Movement

Hon. Martha Wangari, MP
Gilgil Constituency

Jubilee Party

Hon. Gideon Mulyungi, MP
Mwingi Constituency

Wiper Democratic Movement – Kenya

Hon. William Kassait Kamket, MP
Tiaty Constituency

KANU

Hon. (Dr.) Wilberforce Oundo, MP
Funyula Constituency

Orange Democratic Movement

Hon. George G. Murugara, MP
Tharaka Constituency

Democratic Party

Hon. Jennifer Shamalla, MP
Nominated

Jubilee Party

Hon. Munene Wambugu, MP
Kirinyaga Central Constituency
Jubilee Party

Hon. Muturi Kigano, MP
Kangema Constituency
Jubilee Party

Hon. Patrick Kariuki Mariru, MP
Laikipia West Constituency
Jubilee Party

Hon. Sammy Seroney, MP
Nominated
Wiper Democratic Movement - Kenya

Hon. Tindi Mwale, MP
Butere Constituency
Amani National Congress

Hon. Alfred W. Sambu, MP
Webuye East
Amani National Congress

Hon. Abdi Koropu Tepo, MP
Isiolo South Constituency
Kenya Patriots Party

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises –

Ms. Susan Maritim
Senior Clerk Assistant (Team Leader)

Mr. Jimale Mohamed
Second Clerk Assistant

Mr. Wilson Dima Dima
Principal Legal Counsel

Mr. Josphat Motonu
Fiscal Analyst I

Ms. Anne Njeri Kigoro
Research Officer III

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Anthony Wamae
Serjeant at Arms

Mr. Charles Ayari
Superintendent of Electronics

Ms. Mary Otieno
Office Superintendent

2.0 SCRUTINY OF THE LAND REGISTRATION (ELECTRONIC LAND TRANSACTIONS) REGULATIONS, 2019

2.1 Introduction

5. The Cabinet Secretary for Lands and Physical Planning made the Land Registration (Electronic Land Transactions) Regulations, 2019 in exercise of the powers conferred by section 110 of the Land Registration Act (No. 3 of 2012).
6. Section 110 of the Land Registration Act, No. 3 of 2012 provides that the Cabinet Secretary shall make regulations prescribing anything which may be prescribed under the Act for the better carrying into effect the purposes and provisions of the Act. It provides that the regulations may prescribe—
 - a) the forms to be used in connection with the Act;
 - b) the manner and form of the registries of land, the procedures to be followed by the registries and hours they are to be open for business;
 - c) procedures for the transfer of land from one category to another;
 - d) particulars and format to be contained in a register or other document required to be kept under this Act; and
 - e) any other matter for the better carrying into effect of the provisions of this Act.
7. Additionally, **Section 110 of the Land Registration Act, 2012** provides that in making the regulations, rules or prescribing any matters required under the Act, **the Cabinet Secretary shall take into account the advice of the National Land Commission** as required under the Constitution and table them before Parliament for approval.
8. The Land Registration (Electronic Land Transactions) Regulations, 2019 were published vide Legal Notice No.101 of 2019 on 28th June, 2019, received by the Clerk of the National Assembly on 1st August, 2019, and tabled before the House on 6th August, 2019.

2.2 Background of the Regulations

9. Prior to May 2018, the Ministry commenced an electronic registration system in Nairobi under Sections 9 &10 of the Land Registration Act, 2012.
10. The Law Society of Kenya (LSK) being aggrieved by the development, challenged the process vide Nairobi HC Constitutional Petition No. 144 of 2018, LSK VS. AG & 3 Others, claiming lack of consultation.
11. Thereafter the Ministry and the LSK entered into a consent agreement where they *inter alia* agreed to stay the suit and orders for the Ministry to appoint an all-inclusive taskforce to come up with guidelines for the implementation of an electronic registration and conveyancing system.
12. The Taskforce was appointed on 3rd August, 2018 and completed its Report on 1st February, 2019 where it *inter alia* recommended guidelines for the implementation of an electronic registration and conveyancing system thus giving rise to the Land Registration (Electronic Land Transactions) Regulations, 2019.

2.3 Overview of the Regulations

13. The Regulations provide for the procedure of conducting electronic land transactions, electronic submission and registration of documents in all registries where an electronic registry is maintained.
14. Regulation 3 provides for the definition of a user as a person who has entered into a user agreement for various reasons listed under the regulation.
15. Regulation 4 provides for an Electronic Registry System in the registries set out in the Schedule, through which all land registry transactions shall be carried out. The Schedule only provides for the Nairobi Registry.
16. Regulations 5, 6 and 7 provide for the process of registration as a user of the system, the Chief Land Registrar's role in approving user applications, terms and conditions of user agreements and the obligations of a user.
17. Regulation 8 stipulates the conditions for the Chief Land Registrar to restrict, suspend or terminate a user's access to the system.
18. Regulation 9 provides for the process of termination of a user's access beginning with the giving of a notice of termination, contents and service of the notice, user's response to the notice, suspension and expiry of notice.
19. Regulation 10 provides for the process of appeal against the decision of the Chief Land Registrar to restrict, suspend or terminate a user's access to the system. A person is to request the Chief Land Registrar in writing for the grounds of his/her decision, and appeal to the Cabinet Secretary upon receipt of the grounds who will then constitute a 9-member committee within 14 days of receipt of the appeal, to hear and determine the dispute. A person aggrieved by the decision of the committee may appeal to the Environment and Land Court.
20. Regulation 11 provides guidelines for the use of the system to draw and engross conveyancing documents by authorized and qualified persons under the Advocates Act.
21. Regulations 12, 13 and 14 provide for the creation of electronic documents and instruments, electronic generation of documents for registration and lodging of documents for registration respectively.
22. Regulation 15 provides for payment procedure through existing governments payment platforms.
23. Regulation 16 and 17 provides for the procedure to be followed by a registrar in the registration and recording process.
24. Regulation 18 provides for public access to the information maintained electronically through a search via an online platform.
25. Regulation 19 provides for the limitation of liability and warranties made by the Cabinet Secretary and other ministry officials.

2.4 Purpose of the Regulations

26. The Regulations seek to provide for the procedure of conducting electronic land transactions, electronic submission and registration of documents in all registries where an electronic registry is maintained.
27. The Regulations also seek to provide for electronic submission and registration of documents having regard to the Advocates Act (Cap. 16) and the Kenya Information and Communications (Amendment) Act (No. 41A of 2013).

2.5 Legal Considerations

28. The Committee considered the Land Registration (Electronic Land Transactions) Regulations, 2019 against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Land Registration Act, (No. 3 of 2012) and the Statutory Instruments Act (No 23 of 2013).
29. Pursuant to section 16 of the Statutory Instruments Act, the Committee conferred with the regulation making authority through a meeting held on 1st November, 2019 in Diani, Kwale County. The delegation was led by Ms. Farida Karoney, Cabinet Secretary, Ministry of Land and Planning.

3.0 COMMITTEE OBSERVATIONS AND GROUNDS FOR RECOMMENDING ANNULMENT

30. Having scrutinised the Land Registration (Electronic Land Transactions) Regulations, 2019 against the relevant provisions of the law and submissions by the regulation making authority, the Committee observed THAT –

(i) Statutory Timelines

31. Contrary to section 11(1) of the Statutory Instruments Act the **Regulations were NOT submitted to the National Assembly within the statutory timeline** contemplated, having been published on the 28th June, 2019, received by the Clerk of the National Assembly on 1st August, 2019, and tabled before the House on 6th August, 2019. The Regulations ought to have been received by the Clerk of the National Assembly on 30th July, 2019.

(ii) Public Participation

32. On public **participation**, the regulation making authority submitted that it appointed a Taskforce on Electronic Land Transactions under the Land Registration Act, 2012, Land Act, 2012 and the Community Land Act, 2016 vide Gazette Notice No. 7859 Vol CXX No. 90, dated 3rd August, 2018. The taskforce was mandated to study and review land sector-related laws with a view to formulate guidelines for electronic registration of land transactions and conveyancing systems, and submit draft guidelines on the same.

The Committee was also informed that the Taskforce met with Departments at the Ministry of Lands and Physical Planning, the National Land Commission, industry experts, County Governments and Civil Society Organizations.

The Taskforce also published a public notice inviting members of the public to participate and submit their views and proposals in public hearings hosted by the Taskforce. The

hearings were held between 2nd and 11th October, 2018 in Mombasa, Nakuru, Uasin Gishu, Nairobi, Embu, Kakamega, Kisumu, Machakos, Garissa, Nyeri, Kisii and Marsabit Counties.

The regulation making body also submitted through its Explanatory Memorandum that it conducted public participation with various stakeholders including the National Land Commission, the Council of Governors, the Law Society of Kenya, the Institution of Surveyors of Kenya, the Kenya Institute of Planners, the Town and County Planners Association of Kenya the Kenya Property Developers Association, the Kenya Bankers Association and the Land Development Governance Institute.

The Committee concluded that the **Ministry DID NOT demonstrate that it conducted sufficient public participation** in the development of the Regulations, contrary to section 5 and 5A of the Statutory Instruments Act.

(iii) Consultations with the National Land Commission

33. Article 67 of the Constitution stipulates that one of the functions of the National Land Commission is to advise the National Government on a comprehensive programme for the registration of title in land throughout Kenya. In addition, section 110 (2) of the Land Registration Act requires the Cabinet Secretary to take into account the advice of the Commission in making regulations.

Contrary to Article 259(11) of the Constitution, consultation with the National Land Commission was not adequately demonstrated, neither was it stated in the enabling clause of the Regulations.

(iv) Regulatory Impact Statement

34. The Land Registration (Electronic Land Transactions) Regulations, 2019 require a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Statutory Instruments Act since they are intended to prescribe guidelines for electronic land transactions, land being a critical sector throughout Kenya. The provisions of the Regulations are pertinent to the right to own and protection to property, land in particular and right of access to information.

The regulation making authority failed to submit a regulatory impact statement, contrary to sections 6, 7, and 8 of the Statutory Instruments Act, 2013.

(v) Other concerns raised by the Committee

35. **Regulation 5** makes provisions for registration in the prescribed forms which have not been provided for in the Regulations or the Schedules.
36. **Various provisions of the Regulations give the Chief Land Registrar very broad powers that are subject to abuse.** For instance –

- (i) **Regulation 6(1)** giving the Chief Land Registrar power to approve or refuse to approve a person as a user had the potential of abuse and infringement on the rights to property and access to information. The Regulations should have specified the circumstances under which the Chief Land Registrar may refuse to approve a person as a user.; and

(ii) **Regulation 6(5)**, allows the Chief Land Registrar to impose additional conditions for approval as a user. The Regulations have not specified the said conditions or rationale for imposing them. This gives the Chief Land Registrar too much discretion that may be abused.

37. Regulation 10 requires the Cabinet Secretary to constitute a committee of 9 representatives from various stakeholders to hear and determine appeals against the decision of the Chief Land Registrar. The Ministry pointed out that there are currently more than 10 million users, thus appeals may be numerous, and it may be tedious to constitute a committee within 14 days of receipt of each Appeal. It was therefore recommended that a permanent committee be constituted to exclusively hear and determine appeals to the Cabinet Secretary.

Members however **recommend that that several committees ought to be constituted for expeditious resolution of disputes.**

38. Lack of clarity on payment procedure: Regulation 15 provides for payment procedure through existing governments payment platforms, oblivious of the fact that **there are no clearly defined payment platforms.**

39. Limitation of Liability: Regulation 19 (2) speaks to the limitation of liability of the Cabinet Secretary and the officers of the Ministry responsible for land. Members opined that Regulation 19 as presently drafted completely limited the liability of the National Government, making only the Cabinet Secretary and Ministry officials liable. In addition, **the provisions of Regulation 19(2) have been adequately addressed in the Land Act, 2012 and the Land Registration Act, 2012 and therefore should be excluded in the Regulations.**

4.0 COMMITTEE RECOMMENDATION

40. Pursuant to section 15 (1) of the Statutory Instruments Act and Standing Order 210 (4) (b) and having examined the Land Registration (Electronic Land Transactions) Regulations, 2019 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Land Registration Act (*No. 3 of 2012*) and the Statutory Instruments Act (*No. 23 of 2013*), the Committee recommends that the House **annuls in entirety** the said statutory instrument for the aforementioned reasons.

For
Signed.....

HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)

Date.....

13th November 2019

5.0 ANNEXURES

- 1. Adoption List**
- 2. Committee Minutes**
- 3. Legal Notice 101 of 2019 and the Explanatory Memorandum**
- 4. Submissions by the regulation making authority**

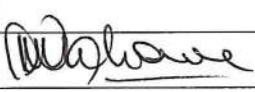
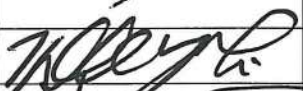
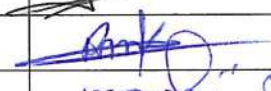
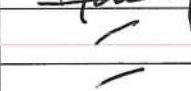
COMMITTEE ON DELEGATED LEGISLATION

ADOPTION SCHEDULE

Report on the Annulment of Land Registration (Electronic Land Transactions) Regulations, 2019

We, the undersigned, hereby affix our signatures to this Report to affirm our approval of the Report:

DATE: 12/11/2019

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss-Shollei CBS MP (Chairperson)	/
2.	Hon. Fatuma Ali Gedi, MP (Vice Chairperson)	
3.	Hon. Isaac Waihenya Ndirangu, MP	
4.	Hon. Robert Mbui, MP	
5.	Hon. Alice Wahome, MP	
6.	Hon. Daniel Maanzo, MP	/
7.	Hon. Muriuki Njagagua, MP	/
8.	Hon. Martha Wangari, MP	
9.	Hon. Timothy Wanyonyi, MP	
10.	Hon. William Kamoti Mwamkale, MP	
11.	Hon. Patrick Kariuki Mariru, MP	
12.	Hon. Ronald Kiprotich Tonui, MP	
13.	Hon. William Kassait Kamket, MP	
14.	Hon. Munene Wambugu, MP	
15.	Hon. George Gitonga Murugara, MP	/
16.	Hon. Jennifer Shamalla, MP	/
17.	Hon. Muturi Kigano, MP	
18.	Hon. (Dr.) Wilberforce Oundo, MP	
19.	Hon. Sammy Seroney, MP	
20.	Hon. Tindi Mwale, MP	/
21.	Hon. Gideon Mulyungi, MP	/
22.	Hon. Abdi Tepo, MP	/
23.	Hon. Alfred Sambu, MP	/

**MINUTES OF THE 61ST SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON SATURDAY 2ND NOVEMBER, 2019 AT 2.30 P.M. IN THE
WARIARA CONFERENCE CENTRE, JACARANDA, DIANI, KWALE COUNTY**

PRESENT

- | | | |
|---|---|------------------|
| 1. The Hon. Fatuma Gedi, MP | - | Vice Chairperson |
| 2. The Hon. George Murugara, MP | - | |
| 3. The Hon. Robert Mbui, MP | | |
| 4. The Hon. Waihenya Ndirangu, MP | | |
| 5. The Hon. Daniel Maanzo, MP | | |
| 6. The Hon. Timothy Wanyonyi, MP | | |
| 7. The Hon. Kamoti Mwamkale, MP | | |
| 8. The Hon. Martha Wangari, MP | | |
| 9. The Hon. (Dr.) Wilberforce Oundo, MP | | |
| 10. The Hon. Muriuki Njagagua, MP | | |
| 11. The Hon. Jennifer Shamalla, MP | | |
| 12. The Hon. Gideon Mulyungi, MP | | |
| 13. The Hon. George Murugara, MP | | |
| 14. The Hon. Sammy Seroney, MP | | |

ABSENT WITH APOLOGY

- | | | |
|--|---|-------------|
| 1. The Hon. Gladys Boss Shollei CBS MP | - | Chairperson |
| 2. The Hon. Alice Wahome, MP | | |
| 3. The Hon. Munene Wambugu, MP | | |
| 4. The Hon. Ronald Tonui, MP | | |
| 5. The Hon. Patrick Mariru, MP | | |
| 6. The Hon. Muturi Kigano, MP | | |
| 7. The Hon. Kassait Kamket, MP | | |
| 8. The Hon. Abdi Koropu Tepo, MP | | |
| 9. The Hon. Tindi Mwale, MP | | |

ABSENT

The Hon. Alfred Sambu, MP

IN-ATTENDANCE

National Assembly Secretariat

- | | | |
|-----------------------------|---|---------------------------------------|
| 1. Ms. Susan Maritim | - | Senior Clerk Assistant |
| 2. Mr. Jimale Mohamed | - | Second Clerk Assistant |
| 3. Mr. Dima Dima | - | Principal Legal Counsel |
| 4. Ms. Anne Kigoro | - | Research and Policy Analyst |
| 5. Mr. Charles Ayari | - | Superintendent of Electronics (Audio) |
| 6. Ms. Mary Otieno | - | Office Superintendent |
| 7. Ms. Millicent O. Akhonya | - | Legal Pupil |

The meeting commenced at 10.15 a.m. with the Prayer.

The Committee raised the following concerns –

- 1) **Section 110 (2) of the Land Registration Act and Article 259 (11) of the Constitution** obligates the Cabinet Secretary to obtain the **advice of the National Land Commission** in developing the Regulations. The Committee observed that the Ministry failed to demonstrate consultations with the NLC.
- 2) The prescribed Form referred to in **Regulation 5 (Registration as a user of the system)** is missing from Schedules to the Regulations;
- 3) **Sub-Regulations (5) and (6) of Regulation 6 (User Agreement)**, gives a lot of powers to the Chief Land Registrar to impose additional conditions for approval and may at any time by notice in writing vary or revoke conditions for approval.
- 4) **Regulations 5 and 6** also impose additional conditions to a person who intends to be registered to apply again to the Chief Land Registrar as prescribed in the Form.
- 5) **Regulation 7 on Obligations of Users** may, if not checked, may infringe on right to privacy and may be abused if proper controls are not put in place.
- 6) The person referred to in '**Regulation 10 on Appeals against the decisions of the Chief Land Registrar and Regulation 11 (1)** requires further elucidation.
- 7) **Regulation 11 on the use of the system to draw and engross conveyancing documents** without requiring an advocate's engrossing requires further consultations.
- 8) On **Regulation 14(4)**, there is need to cross-check with the Evidence Act on electronic copies and the Ministry to consider areas that have no access to internet connection or areas where citizens cannot access the electronic register. The CS noted that the Electronic Registry is complimentary to the manual one.
- 9) **Regulation 19** on Limitation of Liability removes any responsibility from the public officers/Ministry officials, contrary to the Leadership and Integrity Act. The Committee maintained that the Ministry officials are fully responsible for any commissions or omissions on their part.
- 10) **Security of the Registry**: The Committee was assured that the Electronic Registry system is secure and access will be restricted to persons interested in a certain parcel land. There'll also be different levels of access during transaction.
- 11) The system is currently available in Nairobi only but will be rolled out to other 61 centres across the country. The Ministry will be required to publish a Corrigenda to the Schedule to include other counties with electronic registers from time to time.

- 12) The CS informed the Committee that the electronic registry is in response to the Government's policy decision on central collection of revenue
- 13) The Committee noted that **public participation undertaken by the Ministry was inadequate** and doesn't meet the expectations of sections 5 and 5A of the SI Act.
- 14) Concerns were also raised regarding transacting land matters on the e-Citizen platform despite disquiet from some sections of government.

Committee Resolution

The Committee having scrutinized the Land Registration (Electronic Land Transactions) Regulations, 2019 resolved to **annul in entirety** the Regulations pursuant to SO 210 (4) (b) for the aforementioned reasons.

The decision to **annul** was proposed by Hon. George Murugara, MP, and seconded by Hon. Martha Wangari, MP for the aforementioned reasons.

MIN.NO. /NA/CDL/2019/352 CONSIDERATION OF THE PHYSICAL PLANNING AND LAND USE PLANNING (CLASSIFICATION OF STRATEGIC NATIONAL OR INTER-COUNTY PROJECTS) REGULATIONS, 2019

The Committee observed that the Physical Planning and Land Use Planning (Classification of Strategic National or Inter-County Projects) Regulations, 2019 are beneficial and are intended to make provisions regarding the projects that may be classified as strategic national or intercounty projects. The Regulations are instrumental in the implementation of the parent Act by further clarifying matters relating to strategic national or inter-county projects.

The Committee reiterated its position of 17th October, 2019 to approve the Regulations.

MIN.NO. /NA/CDL/2019/353 CONSIDERATION AND ADOPTION OF VARIOUS REPORTS RELATING TO REGULATIONS

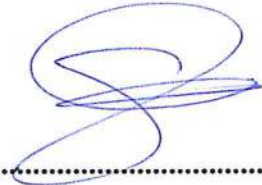
The Committee considered and adopted the following Reports-

- 1. Report on the Consideration of the Value Added Tax (Amendment) Regulations, 2019 (Legal Notice No. 86 of 2019):** Proposed by Hon. Jennifer Shamalla, MP and seconded by Hon. Muriuki Njagagua, MP
- 2. Report on the Consideration of the Political Parties (Funding) Regulations, 2019 vide Legal Notice No 143 of 2019:** Proposed by Hon. Sammy Seroney, MP and seconded by Hon. George Murugara, MP
- 3. Report on the Consideration of the Public Service Commission Regulations, 2019 vide Legal Notice No 65 of 2019:** Proposed by Hon. (Dr.) Wilberforce Oundo, MP and seconded by Hon. Timothy Wanyonyi, MP

4. **Report on the Consideration of the Joint Collection Tariffs, 2019 vide Legal Notice No 107 of 2019:** Proposed by Hon. Sammy Seroney, MP and seconded by Hon. Martha Wangari, MP

MIN.NO. /NA/CDL/2019/354 ADJOURNMENT

The meeting was adjourned at 4.35 p.m. until Tuesday 5th November, 2019 at 10.00 am in Parliament Buildings.

Fv
Signed: 

Date: *5th November 2019*

HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)

**MINUTES OF THE 58TH SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON FRIDAY, 1ST NOVEMBER, 2019 AT 10.00 A.M. IN THE
WARIARA CONFERENCE CENTRE, JACARANDA INDIAN OCEAN BEACH
RESORT, DIANI, KWALE COUNTY**

PRESENT

- | | | |
|---|---|------------------|
| 1. The Hon. Fatuma Gedi, MP | - | Vice Chairperson |
| 2. The Hon. George Murugara, MP | | |
| 3. The Hon. Robert Mbui, MP | | |
| 4. The Hon. Waihenya Ndirangu, MP | | |
| 5. The Hon. Daniel Maanzo, MP | | |
| 6. The Hon. Timothy Wanyonyi, MP | | |
| 7. The Hon. Kamoti Mwamkale, MP | | |
| 8. The Hon. Martha Wangari, MP | | |
| 9. The Hon. (Dr.) Wilberforce Oundo, MP | | |
| 10. The Hon. Muriuki Njagagua, MP | | |
| 11. The Hon. Jennifer Shamalla, MP | | |
| 12. The Hon. Gideon Mulyungi, MP | | |
| 13. The Hon. George Murugara, MP | | |
| 14. The Hon. Sammy Seroney, MP | | |

ABSENT WITH APOLOGY

- | | | |
|--|---|-------------|
| 1. The Hon. Gladys Boss Shollei CBS MP | - | Chairperson |
| 2. The Hon. Alice Wahome, MP | | |
| 3. The Hon. Munene Wambugu, MP | | |
| 4. The Hon. Ronald Tonui, MP | | |
| 5. The Hon. Patrick Mariru, MP | | |
| 6. The Hon. Muturi Kigano, MP | | |
| 7. The Hon. Kassait Kamket, MP | | |
| 8. The Hon. Abdi Koropu Tepo, MP | | |
| 9. The Hon. Tindi Mwale, MP | | |

ABSENT

The Hon. Alfred Sambu, MP

IN-ATTENDANCE

National Assembly Secretariat

- | | | |
|-----------------------|---|---------------------------------------|
| 1. Ms. Susan Maritim | - | Senior Clerk Assistant |
| 2. Mr. Jimale Mohamed | - | Second Clerk Assistant |
| 3. Mr. Dima Dima | - | Principal Legal Counsel |
| 4. Ms. Anne Kigoro | - | Research and Policy Analyst |
| 5. Mr. Charles Ayari | - | Superintendent of Electronics (Audio) |

- | | | |
|--------------------------|---|-----------------------|
| 6. Ms. Mary Otieno | - | Office Superintendent |
| 7. Ms. Millicent Akhonya | - | Legal Pupil |

Ministry of Lands and Physical Planning

- | | | |
|--------------------------|---|--|
| 1. Ms. Farida Karoney | - | Cabinet Secretary |
| 2. Mr. Gideon Mung'aro | - | Cabinet Administrative Secretary |
| 3. Mr. Nicholas Muraguri | - | Principal Secretary |
| 4. Mr. Augustine Masinde | - | Director of Physical Planning |
| 5. Mr. Metrine Maina | - | Assistant Office Administrator |
| 6. Ms. Jane Mamuli | - | Principal Administrator |
| 7. Ms. Caroline Menin | - | Legal Advisor to CS |
| 8. Mr. Arthur Mbatia | - | Senior Physical Planning Officer |
| 9. Ms. Getrude Rabong'o | - | Assistant Director, Physical Planning |
| 10. Ms. Truphosa Achar | - | Principal State Counsel |
| 11. Mr. Charles Muemi | - | Ag. Director, Valuation |
| 12. Mr. Edward Kosgei | - | Director, Land Administration |
| 13. Mr. John W Njogu | - | Deputy Chief State Counsel |
| 14. Mr. Paul Mwangi | - | Director, Land Adjudicators & Settlement |
| 15. Ms. Jane Ndiba | - | Snr. Deputy Chief Land Registrar |
| 16. Mr. John Maina | - | Deputy Director of Surveys |
| 17. Mr. Tom Abuta | - | Deputy Chief State Counsel |

MIN.NO. /NA/CDL/2019/339 PRAYER AND PRELIMINARIES

The meeting was called to order at 10.15 a.m., followed by prayers.

The Committee thereafter unanimously approved the Retreat Programme as presented, without amendments.

The Session Chairperson, Hon. Murugara conveyed the apologies of the substantive Chairperson who was away. He then welcomed the Ministry of Lands and Physical Planning led by the Cabinet Secretary, Ms. Farida Karoney to the meeting and requested all participants to introduce themselves.

MIN.NO. /NA/CDL/2019/340 OPENING REMARKS

Opening Remarks by the Ag. Chairperson

Hon. George Murugara, MP welcomed participants to the retreat and thanked the Cabinet Secretary for the Ministry of Lands and Physical Planning for her availability to engage the Committee once again on two Regulations, namely Land Registration (Electronic Land Transactions) Regulations, 2019 and the Physical and Land Use Planning (Classification of Strategic National or Inter County Projects) Regulations, 2019.

He reminded participants of the importance of land matters to the people of Kenya and urged the Ministry to in future engage the Committee for prepublication scrutiny.

Remarks by Ms. Farida Karoney, OGW Cabinet Secretary, Ministry of Lands and Physical Planning

On her part, the Cabinet Secretary thanked the Committee for accepting the invitation to attend and participate in the retreat to consider the Land Registration (Electronic Land Transactions) Regulations, 2019 and the Physical and Land Use Planning (Classification of Strategic National or Inter County Projects) Regulations, 2019.

She informed the meeting that public participation was done in accordance with the Constitution through various stakeholders' meetings and requested the Committee's support in finalizing the implementation of the Regulations.

She then welcomed Mr. Tom Abuta, Deputy Chief State Counsel to present the Land Registration (Electronic Land Transactions) Regulations, 2019.

**MIN.NO. /NA/CDL/2019/341 CONSIDERATION OF LAND REGISTRATION
(ELECTRONIC LAND TRANSACTIONS)
REGULATIONS, 2019**

Mr. Abuta gave the Committee a brief background on the development of the Regulations. He informed the Committee that –

- 1) Prior to May 2018, the Ministry commenced an electronic registration system in Nairobi under Sections 9 & 10 of the Land Registration Act, 2012.
- 2) The LSK being aggrieved by the development, challenged the process vide Nairobi HC Const. Petition No. 144 of 2018, LSK VS. AG & 3 Others, claiming lack of consultation.
- 3) Thereafter the Ministry and the LSK entered into a consent agreement where they *inter alia* agreed to stay the suit and orders for the Ministry to appoint an all-inclusive taskforce to come up with guidelines for the implementation of an electronic registration and conveyancing system.
- 4) The Taskforce was appointed on 3rd August, 2018 and completed its Report on 1st February, 2019 where it *inter alia* recommended guidelines for the implementation of an electronic registration and conveyancing system thus giving rise to the Land Registration (Electronic Land Transactions) Regulations, 2019.
- 5) The Taskforce engaged widely by holding stakeholder consultations and public hearings across the country. The taskforce also consulted internally with all departments in the Ministry of Lands and Physical Planning, the National Land Commission, professional bodies and industry experts, County Governments and civil society organizations. Invitations were sent out vide public notice and also by specific requests to stakeholders requesting them to make structured submissions on the state of digitization.
- 6) The Taskforce made visits to Nairobi Registry and other departments and sections to have a first-hand experience on existing level of computerization of systems at the

Ministry. Finally, the Taskforce conducted public hearings in Mombasa, Eldoret, Nakuru, Nairobi, Kakamega, Embu, Kisumu, Machakos, Kisii, Garissa, Nyeri and Marsabit between 2nd October 2018 to 11th October 2018.

He thereafter presented the Regulations as published.

Plenary

Committee Members sought the following clarifications –

- 1) **Section 110 (2) of the Land Registration Act and Article 259 (11) of the Constitution** obligates the Cabinet Secretary to obtain the **advice of the National Land Commission** in developing the Regulations. The Committee observed that the Ministry failed to demonstrate consultations with the NLC.
- 2) The prescribed Form referred to in **Regulation 5 (Registration as a user of the system)** is missing from Schedules to the Regulations;
- 3) **Sub-Regulations (5) and (6) of Regulation 6 (User Agreement)**, gives a lot of powers to the Chief Land Registrar to impose additional conditions for approval and may at any time by notice in writing vary or revoke conditions for approval.
- 4) **Regulations 5 and 6** also impose additional conditions to a person who intends to be registered to apply again to the Chief Land Registrar as prescribed in the Form.
- 5) **Regulation 7 on Obligations of Users** may, if not checked, may infringe on right to privacy and may be abused if proper controls are not put in place.
- 6) The person referred to in '**Regulation 10 on Appeals against the decisions of the Chief Land Registrar and Regulation 11 (1)** requires further elucidation.
- 7) **Regulation 11 on the use of the system to draw and engross conveyancing documents** without requiring an advocate's engrossing requires further consultations.
- 8) On **Regulation 14(4)**, there is need to cross-check with the Evidence Act on electronic copies and the Ministry to consider areas that have no access to internet connection or areas where citizens cannot access the electronic register. The CS noted that the Electronic Registry is complimentary to the manual one.
- 9) Regulation 19 on Limitation of Liability removes any responsibility from the public officers/Ministry officials, contrary to the Leadership and Integrity Act. The Committee maintained that the Ministry officials are fully responsible for any commissions or omissions on their part.
- 10) **Security of the Registry:** The Committee was assured that the Electronic Registry system is secure and access will be restricted to persons interested in a certain parcel land. There'll also be different levels of access during transaction.
- 11) The system is currently available in Nairobi only but will be rolled out to other 61 centres across the country. The Ministry will be required to publish a Corrigenda to the Schedule to include other counties with electronic registers from time to time.

- 12) The CS informed the Committee that the electronic registry is in response to the Government's policy decision on central collection of revenue
- 13) The Committee noted that **public participation undertaken by the Ministry was inadequate** and doesn't meet the expectations of sections 5 and 5A of the SI Act.
- 14) Concerns were also raised regarding transacting land matters on the e-Citizen platform despite disquiet from some sections of government.

Committee Resolution

The Committee deferred decision making on the Regulations.

MIN.NO. /NA/CDL/2019/342 CONSIDERATION OF PHYSICAL PLANNING AND LAND USE PLANNING (CLASSIFICATION OF STRATEGIC NATIONAL OR INTER COUNTY PROJECTS) REGULATIONS, 2019

The Committee was informed that the Physical Planning and Land Use Planning (Classification of Strategic National or Inter-County Projects) Regulations, 2019 were published by the Cabinet Secretary for Lands and Physical Planning pursuant section 69 (3) of the Physical and Land Use Planning Act, No. 13 of 2019.

The Regulations are intended to prescribe the projects that may be classified as strategic national or intercounty projects.

Regulations 5 and 6 and the **Schedule** prescribe the criteria for determining the projects that are of strategic national importance or inter-county projects of national importance.

Plenary discussions

The Committee was informed that –

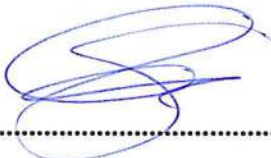
- 1) Waterfalls are under the jurisdiction of the National government.
- 2) Waste Management and disposal policy is the responsibility of County Governments.

Committee Resolution

The Committee deferred decision making on the Regulations.

MIN.NO. /NA/CDL/2019/343 ADJOURNMENT

There being no other business, the meeting was adjourned at 12.15 p.m. to reconvene same day to meet the Public Service Commission to consider the PSC Regulations, 2019 at 2.30 pm.

For
Signed: 

Date: *5th November 2019*

HON. GLADYS BOSS SHOLLEI CBS MP

(CHAIRPERSON)

where necessary.

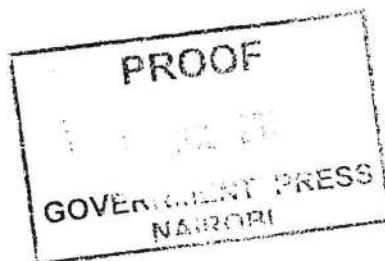
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SPECIAL ISSUE

Kenya Gazette Supplement No. 99

413

28th June, 2019

(Legislative Supplement No. 30)

LEGAL NOTICE NO. 101

THE LAND REGISTRATION ACT

(No. 3 of 2012)

IN EXERCISE of the powers conferred by section 110 of the Land Registration Act, 2012, the Cabinet Secretary for Lands and Physical Planning makes the following Regulations—

THE LAND REGISTRATION (ELECTRONIC LAND TRANSACTIONS) REGULATIONS, 2019

1. These regulations may be cited as the Land Registration (Electronic Land Transactions) Regulations, 2019.

Citation.

2. These Regulations shall apply to the registries set out in the Schedule.

Application.

3. In these Regulations unless the context otherwise requires—

Interpretation.

“user” means a person who has entered into a user agreement with the Chief Land Registrar for—

- (a) the extraction, retrieval or accessing of any document, record or information maintained by the Registrar under the Act;
- (b) the filing or lodging of any document with the Registrar or the submission, production, delivery or furnishing or sending of any document to the registrar under the Act; or
- (c) the making of any application, submission or request to the Registrar under the Act.

4. (1) All registry transactions under the Act shall be carried out through the electronic registry system in the registries set out in the Schedule.

Electronic registry system.

(2) Notwithstanding paragraph (1), where a transaction cannot be carried out using the electronic registration system, the person seeking to carry out the transaction shall carry out the transaction through such other means as the Chief Land Registrar may determine.

(3) The Chief Land Registrar may refuse to process a registry transaction if the person seeking to carry out the registry transaction under paragraph (1) —

- (a) fails to properly complete the prescribed form in accordance with the instructions contained in the form;
- (b) fails to attach a document or provide the information in a prescribed form; or

(c) fails to pay the prescribed fee.

(4) The Chief Land Registrar may by electronic means on the electronic registry system—

- (a) issue a notice, certificate or document which is required to be issued by the Registrar under the Act;
- (b) certify a form, document or extract of a document required to be certified by the Registrar under the Act; or
- (c) send any document issued or certified by the Registrar to the electronic addresses provided by a user for that purpose.

5. A person who wishes to be registered as a user shall apply to the Chief Land Registrar in the prescribed form.

Registration as a
user of the system

6. (1) The Chief Land Registrar shall consider an application made under regulation 5 and may approve or refuse to approve a person as a user.

User Agreement.

(2) The Chief Land Registrar shall determine, in writing, and avail to the public the user requirements and the terms and conditions.

(3) The Chief Land Registrar shall not approve an application under paragraph (1) unless the applicant has entered into a user agreement which includes an obligation on the user to comply with the requirements.

(4) The Chief Land Registrar shall verify—

- (a) the identity of an individual applicant;
- (b) in the case of a partnership, the identity of the person or persons signing the user agreement on behalf of the partnership;
- (c) in the case of a body corporate, the identity of the person or persons signing or witnessing the affixing of the seal on behalf of the body corporate; or
- (d) the identity of a power of attorney appointed to sign the user agreement.

(5) The Chief Land Registrar may impose such additional conditions as may be specified in an approval.

(6) The Chief Land Registrar may at any time by notice, in writing, vary or revoke the conditions specified in an approval.

(7) A user shall comply with the user requirements and terms and conditions of approval.

7. (1) A user shall—

Obligations of
users.

- (a) carry out authorized transactions;
- (b) complete such formalities as are required to become a registered user before accessing the system;
- (c) meet the eligibility criteria at all times;
- (d) be responsible for the security of his or her login credentials and for any access made using the login credentials;
- (e) not distribute, sell or combine any information accessed through the system;
- (f) shall not copy, exchange, sell, disclose or use the land related information accessed from the system for any other purpose other than what is stated in the user agreement without prior written approval of the Cabinet Secretary.

(2) A user may—

- (a) request a change of their login credentials; or
- (b) terminate their access to the system by giving a notice.

(3) A user who has terminated their access to the system shall be bound by the obligations in paragraph (1) that relate to land information that was accessed.

8. (1) The Chief Land Registrar may restrict, suspend or terminate a user's access to the system—

Termination of user's access.

- (a) where a user has breached the terms and conditions of access;
- (b) where there is evidence of unauthorized access, by the user or by anyone using the user's login credentials, to land related information by means other than those permitted; or
- (c) in cases of fraud, identity theft, system misuse; unqualified persons accessing the system, or death of a user.

(2) The Chief Land Registrar may suspend access when investigations are being undertaken.

(3) The Chief Land Registrar shall ensure that the user cannot—

- (a) in the case of restriction, access the system other than in accordance with the restriction; or
- (b) in the case of suspension or termination, access the system.

9. (1) The Chief Land Registrar shall not terminate a user's access without notifying the user, in writing, of the intended termination.

Notice of termination.

(2) The Chief Land Registrar shall specify in the notice under paragraph (1) —

- (a) the grounds of termination;
- (b) the facts which, in the opinion of the Chief Land Registrar justify each ground of termination; and
- (c) the period within which the user shall be required to respond in the notice

(3) A notice for termination may be served by—

- (a) post, to any postal address specified in the user agreement as the user's address of service;
- (b) electronic transmission to any electronic address specified in the user agreement as the user's address of service.

(4) A user may respond to notice of termination and request the Chief Land Registrar to suspend the notice—

- (a) in writing and stating the reason why the access should not be suspended; and
- (b) served upon the Chief Land Registrar before the expiry of the notice.

(5) The Chief Land Registrar shall upon receipt of a response under paragraph (4), respond as soon as practicable explaining to the user the effects of the suspension, pending the hearing and determination of the request to suspend the notice.

(6) A suspension shall expire when—

- (a) notice of termination is withdrawn;
- (b) the user terminates the user agreement; or
- (c) so ordered by the court.

(7) The Chief Land Registrar may, if satisfied that it is no longer appropriate to terminate the agreement, withdraw the restriction, suspension or termination notice at any time before the notice expires by sending a notification to that effect to the user and inform the court of the withdrawal where the termination has been subject of an appeal pending before court.

10. (1) A person may, in writing, request the Chief Land Registrar to provide the reasons for his decision to refuse to approve the person as user, suspend, restrict or revoke the person's approval as user or attach, vary or revoke a condition to an approval.

Appeals against the decisions of the Chief Land Registrar.

(2) A person who is aggrieved by a decision may upon receipt of the grounds of the decision from the Chief Land Registrar, appeal against the decision to the Cabinet Secretary.

(3) The Cabinet Secretary shall within fourteen days of receipt of an appeal, constitute a committee comprising of the following to hear and determine the appeal—

- (a) a representative from the Ministry;
- (b) a representative of the Law Society of Kenya;
- (c) a representative of the National Land Commission;
- (d) a representative of the Council of Governors (CoG); and
- (e) any other relevant person.

(4) A person aggrieved by the decision of the committee appointed under paragraph (3) may appeal to the Environment and Land Court.

11. (1) The Chief Land Registrar may authorize a person qualified to draw and engross conveyancing documents and instruments under the Advocates Act to use the system.

Use of the system to draw and engross conveyancing documents.

(2) The authorization under paragraph (1) shall be restricted to law firms and individual licensed advocates whose firms shall clearly state the approved users.

(3) The Chief Land Registrar may authorize parties to a transaction or their appointed nominees to draw documents that do not require drawing and engrossing by an advocate.

12. (1) The forms set out in the Sixth Schedule of the Land Registration (General) Regulations, 2017 shall be authorized for use in the system subject to such modifications as the Registrar may make under regulation 87(1) of the Land Registration (General) Regulations, 2017, from time to time, to enable the use of the forms electronically, in the system.

Creation of electronic documents and instruments.

(2) A person preparing a document that gives effect to a disposition in the electronic form shall ensure that the document provides for the date and time when it takes effect.

(3) Verification and attestation of registrable instruments to be lodged for registration in the electronic registration system shall be done by a person qualified to act as an advocate.

(4) A person preparing a registrable instrument shall ensure that the instrument is serialized and has adequate security features.

13. (1) A user shall identify the type of document they want to generate and register.

Electronic generation of documents for registration.

(2) Certain fields of information such as the address, owner's name and the description of the property should be automatically prepopulated into the document from the database by the system.

(3) After preparing the document, a user shall lodge the documents electronically for registration.

14. (1) A user may lodge documents electronically for the purposes of registration in the forms with such modifications as may be made by the Registrar under regulation 87(1) of the Land Registration (General) Regulations, 2017, from time to time, to enable the use of the forms electronically.

Lodging of documents electronically for purpose of registration. LN 278 of 2017.

(2) A document or instrument lodged electronically for the purpose of registration electronically has the same effect as if the document or instrument was lodged in the form of a paper document.

(3) A user shall—

- (a) populate the online forms and attach photos and other relevant documents, if required;
- (b) print the form, execute and have it attested before an Advocate; and

(c) scan and upload the form(s) to the system.

(4) A user shall manually lodge documents that cannot be lodged electronically including certificates of title, which the Registrar requires the production of the original.

(5) Where valuation is required, the user shall forward the request electronically and upon receipt, the Director of Valuation shall send a notification electronically to the user indicating the date and time when the request was received.

(6) The user shall, upon the completion of valuation, assess and pay duty and other fees electronically before registration.

(7) The Registrar shall, upon successful registration or otherwise, send a notification electronically to the user.

(8) Documents bearing original signatures and seals shall be retained by the user for such period as may be specified by the Registrar.

15. A user shall make payments in respect to registration of instruments made in electronic form through the existing government payment platforms.

Payment.

16. (1) A Registrar shall access the Electronic Registry System with the authorization of the Chief Land Registrar and after verification against the Integrated Payroll and Payroll Database.

Procedure to be followed by a Registrar in the registration process.

(2) The Chief Land Registrar shall define the scope of activities of each Registrar by a predefined role, responsibility or jurisdiction matrix within the system.

(3) A Registrar shall, upon logging into the system have access to applications within the jurisdiction predefined in paragraph (2).

(4) A Registrar shall be required to process all applications within the predefined jurisdiction within the period specified.

(5) A Registrar shall, for the purposes of processing the applications, rely on the documentation and data available within the system and may, where necessary, refer to the backup of manual records.

(6) Upon completion of processing, the Registrar shall make available to applicants the results of their applications electronically within the dashboards of the applicants while ensuring confidentiality and protection of privacy of the applicants.

(7) All electronic documents submitted to the Registrar for processing shall be stored within a document management system and made available for reference within the system for future reference.

17. The Registrar shall electronically enter, note, record or register in respect of land any matter required by the Act or any other law to be entered, noted, recorded or registered in respect of land.

Recording or registration of electronic documents in the register.

18. (1) A person shall access information maintained electronically through a search via an online platform.

Public access to information maintained electronically.

(2) A person may, under paragraph (1) undertake the following categories of searches—

- (a) a current status search of which the result from the search shall include the ownership, size, encumbrances, inhibitions, unregistered dealings and payment of land rent for that parcel of land; or
- (b) a historical search of which the result shall provide a history of computer folio and list all transactions that should be availed in a chronological order together with the status and status date for each entry.

(2) A person shall not access information maintained electronically without a user agreement.

19. (1) The Cabinet Secretary and the officers of the Ministry responsible for lands shall not, except to the extent specified in the Act, make any express or implied warranty with respect to the accuracy, completeness, merchantability or fitness for a particular purpose of the land related information.

Limitation of liability.

(2) Except as provided under the Act, the Cabinet Secretary or the officers of the Ministry responsible for land shall be liable to a user or any other person or entity for any direct, indirect or consequential damages whatsoever as a result of using the system or the land related information.

SCHEDULE

(r.2)

REGISTRIES TO WHICH THESE REGULATIONS SHALL APPLY

1. Nairobi Land Registry

PARIDA KARONEY,
Cabinet Secretary for Lands and Physical Planning.

EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM TO THE LAND REGISTRATION (ELECTRONIC LAND TRANSACTIONS) REGULATIONS, 2019- LEGAL NOTICE NO.101

PART I

Name of the Statutory Instrument	The Land Registration (Electronic Land Transactions) Regulations, 2019
Name of the parent Act	The Land Registration Act, 2012
Enacted Pursuant to	Section 110 of the Land Registration Act, 2012
Name of the Ministry	Ministry of Lands and Physical Planning
Gazetted on	June 28, 2019
Tabled on	

PART II

1. Purpose of the Statutory Instrument

These Regulations provide for procedure of conducting electronic land transactions in all land registries where an electronic registry system is maintained.

The Regulations also seek to provide for electronic submission and registration of documents having regard to the Advocates Act (Cap. 16) and the Kenya Information and Communications (Amendment) Act (No. 41A of 2013)

2. Legislative Context

The need for land reforms arose from a long history of inefficient and ineffective land administration and governance system. These challenges led to insecurity of tenure, excessive fragmentation and degradation. The entrenchment of the land issues into the Constitution and the adoption of the National Land Policy set the stage for the process of comprehensive land reforms to take place.

The Constitution details the land policy principles which must be adhered to when holding and managing land. Among the national land policy principles are equity, efficiency, security of tenure, sustainable and productive management of land resources, transparency and cost effective administration of land and conservation of ecologically sensitive areas.

Section 6 of the Land Act requires the Cabinet Secretary, Lands and Physical Planning to coordinate the development and implementation of a National Land Information System with the National Land Commission.

Section 7 of the Land Registration Act makes provision for establishment of a land register to be maintained in each land registration unit in the form to be determined by the Cabinet Secretary. Further, **Section 9** requires the Registrar to maintain the register and any document required to be kept under the Act in a secure, accessible and reliable format including electronic files and an integrated land resource register. **Section 10** requires the Registrar to make information in the register accessible to the public by electronic means or other means as the Chief Land Registrar may reasonably prescribe. **Section 110** empowers the Cabinet Secretary to make regulations for the better carrying into effect the provisions of the Act.

Article 35 of the Constitution states that every citizen has a right to information held by the State or any other person which is required for the exercise or protection of any fundamental freedoms.

Under the Access to Information Act, **Section 5** of the Act requires public entities to hold relevant information in electronic form. The Act gave public entities a grace period of twelve (12) months following its enactment in October, 2016 to put the provisions of the Act into effect.

3. Policy Background

The formulation of a comprehensive National Land Policy (Sessional Paper No. 3 of 2009) set the tone to guide the country towards a sustainable and equitable use of land. The policy addresses issues of land management in Kenya and particularly recognized the need to improve the quality of land information through computerization both at the national and local levels. This is because land information in Kenya is currently manually held thus occasioning inefficiency, delay, fraud, loss of revenue etc. Section 3.5.6 (a) of the policy in particular prescribes the establishment of national guidelines on land information, to govern matters such as land information standards, security, dissemination and pricing

It became necessary to put in place guidelines to facilitate electronic land registration. A Taskforce on Electronic Land Transactions, Registration, Conveyancing and other Related Activities under the Land Registration Act 2012, The Land Act, 2012, and the Community Land Act, 2016 was appointed vide

Gazette Notice No 7859 of 3rd August, 2018 by the Cabinet Secretary, Ministry of Land and Physical Planning to amongst other functions develop a draft for electronic land registration.

Consultation outcome

The Taskforce in coming up with the report did conduct extensive public participation with various stakeholders i.e. the National Land Commission, Council of Governors, Law Society of Kenya, Institution of Surveyors of Kenya, Kenya Institute of Planners TCPAK, Kenya Properties Developers Association, Kenya Bankers Association, Land Development Governance Institute etc. Consultations with the members of the public in all regions of the country were also conducted.

Regulations will be applied in a phased manner with respect to registries whose records have been computerized. Customers will be given sufficient notice of this roll out.

4. Guidance

There is going to be need to engage with the users and the enforcement agency involved in the application of these regulations. These regulations being new in many aspects will need to be brought to the attention of the public and users through mass media and other forms. More importantly, the office of the Chief Land Registrar and all involved in registration of interest in land services will need to be educated of the changes wrought by these regulations. The Cabinet Secretary plans to embark on this process by rolling out a program immediately these regulations come into force.

5. Impact

5.1. The Impact on Fundamental Rights and Freedoms

These regulations have been formulated in conformity with the Constitution of Kenya, 2010 and within powers conferred to the Cabinet Secretary under the Land Registration Act. The fundamental rights and freedoms as are spelled out in the constitution have therefore not been interfered with in any way. On the contrary, the right to own and protection to property has been buttressed by way of an effective and efficient land information system. A positive impact in the form of protecting property will yield since it is expected that the runaway fraudulent activities will be arrested courtesy of the information system.

5.2. The impact on the private sector

Going by the response and support received from the private sector during the formulation process of these regulations it is expected that the application thereof will create a positive impact on the private sector. The keeping of information in electronic format allows easy access to the private sector thus enhancing business and transactions over land. The system will also reduce cases of fraud and increased security to proprietors hence a ripple effect to the country at large.

5.3. The impact on the public sector

Land being a critical sector, the public agencies vested with the responsibility of managing and enforcing these regulations have an enormous task of ensuring a positive impact envisaged by these regulations is delivered to the general public. It is expected that through land information management system, public agencies involved in land registration will be able to arrest the vices that have bedeviled the land sector in the past.

5.4. An impact assessment has not been prepared for these regulations

6. Monitoring and review

It is expected that upon application of these regulations, this country will have an effective and efficient registration system leveraging on information technology. Follow up and update of the registration system will be possible in an electronic environment.

Disclaimer

These notes act only as a guideline and as such they are not exhaustive and for clarity proper reference should be made to the main body of these regulations.
