

THE ENVIRONMENT AND LAND COURT ACT, 2011

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AN ACT of Parliament to give effect to Article 162(2)(b) of the Constitution; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction functions and powers, and for connected purposes

ENACTED by the Parliament of Kenya, as follows-

PART I – PRELIMINARY

Short title. **1.** This Act may be cited as the Environment and Land Court Act, 2011.

Interpretation. **2.** In this Act , unless the context otherwise requires—

“Chief Justice” means the Chief Justice appointed under Article 166 of the Constitution;

“Chief Registrar” means the person holding the office of

Chief Registrar established under Article 161 of the Constitution;

“Court” means the Environment and Land Court established under section 4 pursuant to Article 162 (2)(b);

“environment” means the totality of nature and natural resources, including the cultural heritage and infrastructure essential for social-economic activities;

“Judge” means a person appointed in accordance with the provisions of Article 166(1)(b) of the Constitution;

“land” has the same meaning assigned to it by Article 260 of the Constitution;

“natural resources” has the same meaning assigned to it under Article 260 of the Constitution;

“Principal Judge” means the principal judge of the Court elected in accordance with Article 165(2) of the Constitution;

“Register” means the register where all pleadings and supporting documents and all orders and decisions of the Court are kept;

“Registrar” means the Registrar of the Environment and Land Court approved under section 9;

“rules” means the rules made under section 24.

Overriding
objective.

3.(1) The principal objective of this Act is to enable the Court to facilitate the just, expeditious, proportionate and accessible resolution of disputes governed by this Act.

(2) The Court shall, in the discharge of its functions under this Act give effect to the principal objective in subsection (1).

(3) The parties and their duly authorised representatives, as the case may be, shall assist the Court to further the overriding objective and participate in the proceedings of the Court.

PART II – ESTABLISHMENT AND CONSTITUTION OF THE COURT

Establishment of the Court.

4. (1) There is established the Environment and Land Court.

(2) The Court shall be a superior court of record with the status of the High Court.

(3) The Court shall have and exercise jurisdiction throughout Kenya and shall pursuant to section 26, ensure reasonable and equitable access to its services in every county.

Composition of the Court.

5. The Court shall consist of—

(a) the Principal Judge; and

(b) such number of Judges as may be necessary for the efficient and effective discharge of the functions of the Court.

Principal judge.

6. (1) The Principal Judge shall be elected in accordance with Article 165(2) of the Constitution.

(2) The Principal Judge shall hold office for a non-renewable term of five years.

(3) The Principal Judge shall have supervisory powers over the Court and shall report to the Chief Justice.

(4) In the absence of the Principal Judge or in the event of a

vacancy in the office of the Principal Judge, the judges of the Court may elect any other Judge of the Court to exercise the functions of the Principal Judge.

Qualifications of
and appointment of
Judges of the
Court.

7. (1) A person shall be qualified for appointment as Judge of the Court if the person –

- (a) meets the requirements of Article 166(2)(a) and (5) of the Constitution;
- (b) has at least ten years' experience as a distinguished academic or legal practitioner with knowledge and experience in matters relating to environment or land; or
- (c) has held the qualifications specified in paragraphs (a) and (b) for a period amounting in the aggregate, to ten years; and
- (d) meets the requirements of Chapter Six of the Constitution.

(2) The Chief Justice may on the recommendation of the Judicial Service Commission, transfer a judge who meets the qualifications set out at subsection (1) to serve in the Court.

Tenure of office of
Judge of the Court.

8. A Judge of the Court shall hold office until the Judge —

- (a) retires from office in accordance with Article 167(1) of the Constitution;
- (b) resigns from office in accordance with Article 167(5) of the Constitution; or
- (c) is removed from office in accordance with Article 168 of the Constitution.

Registrar of the Court.

9. (1) There shall be a Registrar of the Court appointed by the Judicial Service Commission.

(2) Any administrative function of the Registrar may in the Registrar's absence, be performed by any member of staff of the Court authorized by the Principal Judge.

Qualifications for appointment of the Registrar of the Court.

10. A person shall be qualified for appointment as Registrar if the person—

(a) is an advocate of the High Court of Kenya and has, since admission to the Roll of Advocates—

(i) become eligible for appointment as a Judge of the High Court;

(ii) served for at least eight years as a professionally qualified magistrate; or

(iii) attained at least eight years' experience as a distinguished academic or legal practitioner or such experience in other relevant legal field;

(b) demonstrated competence in the performance of administrative duties for not less than three years; and

(c) meets the requirements of Chapter Six of the Constitution.

Functions of the Registrar of the Court.

11. (1) The Registrar shall perform the duties assigned to the Registrar under this Act and such other duties as the Chief Registrar may direct, and in particular be responsible for —

(a) the establishment and maintenance of the Registry of the Court;

- (b) the acceptance, transmission, service and custody of documents in accordance with the Rules;
- (c) facilitating the enforcement of decisions of the Court;
- (d) certifying that any order, direction or decision is an order, direction or decision of the Court, the Chief justice or a Judge, as the case may be;
- (e) the maintenance of the Register of the Court;
- (f) causing to be kept records of the proceedings and minutes of the meetings of the Court and such other records as the Court may direct;
- (g) managing and supervising the staff of the Court;
- (h) the day to day administration of the Court;
- (i) managing the library of the Court;
- (j) facilitating access to judgments and records of the Court;
- (k) undertaking any other duties assigned by Chief Registrar.

(2) In relation to the proceedings before the Court, the Registrar may consider and dispose of procedural or administrative matters in accordance with the Rules or on the direction of the Principal Judge.

Review of the Registrar's decision.

12. (1) Any person aggrieved by a decision of the Registrar on matters relating to judicial functions of the Court may apply for review by a Judge of the Court in accordance with the Rules.

(2) The Judge may confirm, modify or reverse the decision of the Registrar referred to in subsection (1).

PART III – JURISDICTION OF THE COURT

Jurisdiction of the Court

13.(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other written law relating to environment and land.

(2) In exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the Court shall have power to hear and determine disputes relating to environment and land, including disputes—

- (a) relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land;
- (c) relating to land administration and management;
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to environment and land.

(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to the environment and land under Articles 42, 69 and 70 of the Constitution.

(4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

(5) The Court shall have supervisory jurisdiction over the subordinate courts, local tribunals, persons or authorities in accordance with Article 165(6) of the Constitution.

(6) For the purposes of subsection (7)(b), the Court may call for the record of any proceedings before any subordinate court, body, authority or local tribunal exercising judicial or quasi-judicial functions, or a decision of any person exercising executive authority referred to in subsection (7)(b), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

(7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—

- (a) interim or permanent preservation orders including injunctions;
- (b) prerogative orders;
- (c) award of damages;
- (f) compensation;

(g) specific performance;

(g) restitution;

(h) declaration; or

(i) costs.

Enforcement of
Court Orders.

14. A judgement, award, order or decree of the Court shall be enforceable in accordance with the Rules.

The seal of the
Court.

15. The seal of the Court shall be such device as may be determined by the Court and shall be kept in the custody of the Registrar.

Appeals.

16. Appeals from the Court shall lie to the Court of Appeal against any judgement, award, order or decree issued by the Court in accordance with Article 164(3) of the Constitution.

PART IV – PROCEEDINGS OF THE COURT

Proceedings before
the Court.

17. Except as otherwise provided for in Article 50(8) of the Constitution, the proceedings of the Court shall be in public.

Guiding principles.

18. In exercise of its jurisdiction under this Act, the Court shall be guided by the following principles-

(a) the principles of sustainable development, including;

(i) the principle of public participation in the development of policies, plans and processes for the management of the environment and land;

(ii) the cultural and social principles traditionally applied by any community in Kenya for the management of the environment or natural

resources in so far as the same are relevant and not inconsistent with any written law;

- (iii) the principle of international co-operation in the management of environmental resources shared by two or more states;
 - (iv) the principles of intergenerational and intragenerational equity;
 - (v) the polluter-pays principle; and
 - (vi) the pre-cautionary principle;
- (b) the principles of land policy under Article 60(1) of Constitution;
 - (c) the principles of judicial authority under Article 159(2) of the Constitution;
 - (d) the national values and principles of governance under Article 10(2) of the Constitution; and
 - (e) the values and principles of public service under Article 232(1) of the Constitution.

Procedure and powers of the Court.

19.(1) In any proceedings to which this Act applies, the Court shall act expeditiously, without undue regard to technicalities of procedure and shall not be strictly bound by rules of evidence:

Provided that the Court may inform itself on any matter as it thinks just and may take into account opinion evidence and such facts as it considers relevant and material.

(2) The Court shall not be bound by the procedure laid down by the Civil Procedure Act and shall be guided by the

principles of natural justice.

(3) The Court shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court while trying a suit, in respect of the following matters, namely —

- (a) summoning and enforcing the attendance of any person and examining them on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or document or copy of such record or document from any office in accordance with Article 35 of the Constitution;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decision;
- (g) dismissing an application for default or determining it ex parte;
- (h) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- (i) passing an interim order, including granting an injunction or stay after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act; and

- (j) any other matter which may be prescribed by the rules.

(4) The Court shall have power to require any person who appears to it to have special knowledge of any relevant matter, or of any of the matters to which this Act applies or any written law to which it relates, to furnish in writing or otherwise, and to confirm on oath or affirmation, such expert opinion as may be relevant to any of the issues in the proceedings.

Alternative dispute resolution.

20. (1) Nothing in this Act may be construed as precluding the Court from adopting and implementing, on its own motion, with the agreement of or at the request of the parties, any other appropriate means of alternative dispute resolution including conciliation, mediation and traditional dispute resolution mechanisms in accordance with Article 159(2)(c) of the Constitution.

(2) Where alternative dispute resolution mechanism is a condition precedent to any proceedings before the Court, the Court shall stay proceedings until such condition is fulfilled.

Quorum of the Court.

21. (1) The Court shall be properly constituted for the purposes of its proceedings under this Act by a single judge.

(2) Notwithstanding subsection (1), any matter certified by the Court as raising a substantial question of law —

- (a) under Article 165(3)(b) or (d) of the Constitution;
or
- (b) concerning impact on the environment and land,

shall be heard by an uneven number of judges, being not less than three, assigned by the Principal Judge.

Representation
before the Court.

22. A party to the proceedings may act in person or be represented by a duly authorised representative.

Language of the
Court.

23. (1) The language of the Court shall be English and Kiswahili.

(2) Notwithstanding subsection (1), in all appropriate cases, the Court shall facilitate the use by parties of indigenous languages, Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities.

(3) Where it is expedient and appropriate to do so, the Court may direct that proceedings be conducted and appearances be made through electronic means of communication, including tele-conferencing, video-conferences or other modes of electronic communication.

Rules.

24. (1) The Chief Justice shall, in consultation with the Court, make rules to regulate the practice and procedure of the Court.

(2) The Chief Justice shall make rules to regulate the practice and procedure, in tribunals and subordinate courts, for matters relating to land and environment.

(3) The Chief Justice shall in consultation with the Court make rules for the determination of admissibility by the Court of proceedings pending before any court or local tribunal.

(4) In the absence of the rules envisaged under subsection (1), the Court shall regulate its own procedure.

PART VI - MISCELLANEOUS PROVISIONS

Gender equity and
equal
opportunities.

25. All appointments under this Act shall be made in accordance with Article 27 of the Constitution and shall meet the

requirements of Chapter Six of the Constitution.

Access to justice. **26.(1)** The Court shall ensure reasonable and equitable access to its services in all Counties.

(2) A sitting of the Court may be held at such places and at such times, as the Court may deem necessary for the expedient and proper discharge of its functions under this Act.

Regulations. **27.** The Court may make regulations for the better carrying out of its functions under this Act.

Bar to further suits. **28.** The Court shall not adjudicate over disputes between the same parties and relating to the same issues previously and finally determined by any court of competent jurisdiction prior to the commencement of this Act.

Offences. **29.** Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

Transitional. **30. (1)** All proceedings relating to the environment or to the use and occupation and title to land pending before any Court or local tribunal of competent jurisdiction shall continue to be heard and determined by the same court until the Environment and Land Court established under this Act comes into operation or as may be directed by the Chief Justice or the Chief Registrar.

(2) The Chief Justice may, after the Court is established, refer part-heard cases, where appropriate, to the Court.

Repeal. **31.** The Land Disputes Tribunal Act, No.18 of 1990 is repealed.

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 25th August, 2011.

Clerk of the National Assembly.

Presented for assent in accordance with the provisions of the Constitution on the, at the hour of

Attorney-General.