

Title: "Land Laws (Amendment) Bill 2023: A Paradigm Shift in Freehold Land Ownership"

Introduction: In a potentially transformative move, Majority leader Kimani Ichung'wah has sponsored the Land Laws (Amendment) Bill 2023, which aims to reshape the landscape of land ownership in Kenya. If this bill makes its way through the National Assembly, individuals with freehold land within or close to urban areas may find themselves subject to an annual rent in addition to existing land rates. This proposed amendment to the Land Act 2012 seeks to bolster the government's revenue streams to address fiscal deficits. Currently, freehold land grants indefinite ownership without any annual charges, making it a prevalent form of property ownership, particularly for ancestral lands in the country.

Implications for Urban Landowners: If enacted, the bill will significantly impact home and landowners, especially those in areas like Syokimau, Kiambu, Thika, Mlolongo, and other regions bordering Nairobi. The amendment suggests an annual levy equivalent to the land rent for leasehold land of the same size and in the same zone. This marks a departure from the existing practice where freehold landowners enjoy indefinite ownership without the burden of yearly fees. The proposed change, targeting urban areas and cities, could reshape property dynamics for a considerable portion of the population.

Efficiency Enhancement and Compliance Measures: Beyond revenue generation, the bill aims to enhance efficiency in matters related to land grants, dispositions, and compulsory land acquisitions. To ensure compliance with the proposed provision, the bill suggests amendments to the Land Registration Act of 2012. This would prohibit the registration of any land for which land rent has not been paid, placing an additional layer of scrutiny on property transactions. This provision indicates a move towards a more regulated and monitored system of land ownership and transfer.

Establishment of Land Acquisition Committee which shall comprise of an advocate of 10 years standing who shall be the chairperson, 2 registered valuers who shall have at least 10 years experience, one licensed surveyor of at least 10 years standing, one person with extensive knowledge and experience in the informal sector. The committee shall listen to appeals from the decision of the Cabinet Secretary relating to matters of compulsory land acquisition process.

Rent payable and valuation of the rent: the annual rent payable section 28 of the proposed bill require that the annual rent payable under a lease under this Part shall be the rent reserved in the lease for the subsequent period of 10 years which shall be charged at such a percentage of the unimproved value assessed every 10 years by the commission and as gazetted by the cabinet secretary.

Despite any terms in a lease, the Commission is required to conduct a valuation of the leased land every tenth year until the lease term expires. This valuation is conducted to determine the rent for the second subsequent period of the lease, which is the year following the year in which the valuation is made. The determined rent becomes payable from the beginning of the relevant period. In the event that a lessee successfully objects to the valuation under section 28C, the rent payable will be adjusted to align with the valuation determined under that section, and the lessee is entitled to a refund for any overpaid rent.

Regarding the valuation process, once a valuation provided for in section 28B is completed, the Cabinet Secretary must, before the expiration of the year in which the valuation was made, serve a notice to the lessee. This notice will detail the determined value of the land and the annual rent, as

per the valuation, payable by the lessee in the next following period. The lessee is then called upon to submit in writing whether they object to the valuation.

The Land Act of 2012: The Bill proposes to amend the Land Act no.5 of 2012 to introduce amendments relating to general conditions relating to leases, licenses and agreements for public land to introduce new provisions to regulate rent for the several periods and valuation of land for rent, in addition, the bill seeks to amend provisions relating to compulsory acquisition of interests in land.

The Intend Compulsory Aquisition Process Under This Bill: Preliminary Notice 107:

1. When the national or county government deems it necessary to acquire specific land under section 110, the respective Cabinet Secretary or County Executive Committee Member must submit a land acquisition request to the Commission.
2. The Commission will establish criteria and guidelines for the acquiring authorities to follow in land acquisition.
3. The Commission may reject an acquiring authority's request if it doesn't meet the prescribed requirements in subsection (2) and Article 40(3) of the Constitution. If the Commission rejects a request, it must inform the acquiring authority within fourteen days of the decision.
4. If the request meets the criteria, the Commission will map and value the land using set criteria, ensuring the acquiring authority identifies occupants and maintains a register of their occupation details.
5. Upon approval, the Commission will publish a notice in the Gazette, specifying the purpose, location, and area of the land to be acquired. The notice will include the purpose of acquisition and details such as location, description, and approximate area. The Registrar, upon receiving the notice, will restrict dealings with the affected land until it vests in the acquiring authority.
6. The registrar will record the intended acquisition in the register.
7. Interested persons, as defined in sections 107 to 133, include those in the land registry, occupants, and spouses. All acquired land must be geo-referenced and authenticated by relevant survey authorities. 107A. Criteria for assessing value for compulsorily acquired freehold land:
8. Valuation for compensation will rely on a land value index developed by the Cabinet Secretary in consultation with county governments and approved by the National Assembly and the Senate.
9. The land value index must be developed within six months of this Act's commencement.
10. The land value index considers declared land values for rates, rents, or stamp duty payments.
11. Increases in land value due to specific conditions will be disregarded for compensation purposes.
12. Various circumstances, such as urgency, inconvenience, or post-publication damage, won't impact land value assessment.
13. The Commission may consider specific matters when assessing land value for compensation.

14. Compensation for occupants without land title is based on occupation duration, improvements made, and potential relocation expenses.

Controversial Nature and Potential Strain: The introduction of new charges for freehold land ownership, amid existing economic strains, could spark controversy and dissatisfaction among Kenyan citizens. With citizens already grappling with various economic challenges, the bill's impact on the cost of land ownership may face resistance. The potential friction raises questions about the societal implications of introducing such charges, particularly in the current economic climate. The **land rates increment proposal** will affect the Registration of Documents Act, the Land Control Act, the Land Registration Act of 2012, The Land Act of 2012, The Community Land Act of 2016, and the Sectional Properties Act of 2020.

Expanded Powers and Beyond 10-Year Land Injustices Claims: In addition to the proposed changes on land charges, the bill seeks to amend the National Land Commission Act of 2012. Notably, it removes time limits for reviewing grants and dispositions of public land and allows continuous receipt of historical land injustices claims beyond 2026. This extension provides an opportunity for addressing long-standing land disputes and injustices, emphasizing a commitment to resolving historical grievances.

Conclusion: The Land Laws (Amendment) Bill 2023 presents a comprehensive overhaul of existing land legislation in Kenya, aiming to generate revenue, enhance efficiency, and address historical land injustices. While the proposed introduction of annual land rent for freehold land may face resistance, the bill's potential impact on urban land dynamics and compliance measures cannot be overlooked. As the National Assembly deliberates on this significant amendment, the repercussions for property owners and the broader society remain a focal point of discussion, underscoring the delicate balance between economic necessity and public sentiment.