

LEGAL ALERT

COMPENSATION FOR COMPULSORY ACQUISITION IN KENYA

Recently, the National Land Commission has come under scrutiny for withholding compensation money which ought to have been remitted to landowners upon acquiring their land compulsorily for various projects. It is estimated that the withheld amount adds up to 2.98 billion for approximately 2,444 landowners. Acquiring bodies such as the Kenya National Highway Authority are required to deposit with the Commission compensation funds together with incidental costs thereto prior to initiating the process of compulsory acquisition. A Senate Committee was convened on **4th September 2024** with an agenda to interrogate this issue of compensation. The National Land Commission cited various reasons for the inordinate delay including acquiring bodies delay in remitting the funds, family conflicts and litigation among others.

Nevertheless, in this highlight, we undertake to share the procedure for compensation once the government has acquired your land compulsorily, as hereunder:

Constitution of Kenya 2010

The National Land Commission under Article 67 of the Constitution has been vested with the mandate of managing public land on behalf of the national and county governments among other functions.

National Land Commission Act CAP 281

The Commission is governed by the National Land Commission Act CAP 281 which stipulates its main objectives to include: the management and administration of land in accordance with the principles of land policy set out in Article 60 of the Constitution and the national land policy and maintain a connection between the Commission, county governments and other institutions dealing with land and land related resources.

Land Act CAP 280

It is imperative to note that under the Land Act CAP 280, Section 107, the Commission is required to establish a criteria and guidelines to be followed by acquiring bodies in the acquisition of land. This criterion must include guidelines for valuation of land to determine the appropriate compensation to be awarded for freehold land, which is set out under Section 107.

Freehold land - Section 107A

In assessing the value of a freehold land, an increase in its value will not be considered if the increase-

- *is as a result of the intended use or development of the land to be acquired;*
- *is likely to accrue from the use to which*

the land will be put when acquired as at the date of publication of the notice of intention to acquire it;

- *is as a result of any development or improvement to the land where improvement was made on the land within two years before the date of publication in the Gazette of the notice of intention to acquire the land, unless it is proved that the improvement was made bona fide and not in contemplation of proceedings for the acquisition of the land or after the date of publication in the Gazette of the notice of intention to acquire the land, unless the improvements were necessary for the maintenance of any building in a proper state of repair and are not capital improvements or is contrary to any law or is detrimental to the health of the occupiers or to public health generally.*

Other factors that will not be considered include: -

- *degree of urgency which has led to the acquisition;*
- *any inconvenience caused to a person interested in the land; and*
- *damage which is likely to be caused to the land after the date of publication in the Gazette of the notice of intention to acquire the land or in consequence of the intended land use.*



These are the factors that the Commission may take into account when valuing freehold land: -

- *damage sustained or likely to be sustained by persons interested during acquisition of the land by reason of severing the land from other land;*
- *damage sustained or likely to be sustained by persons interested in the land during acquisition of the land injuriously affecting other property, whether movable or immovable or in any other manner affecting the person's actual earnings;*
- *change of residence or place of business as a result of the acquisition, reasonable payment of expenses will be determined by the Commission;*
- *damage genuinely resulting from decrease of the profits of the land between the date of publication in the Gazette of the notice of intention to acquire the land and the date the Commission takes possession of the land; and*
- *the effect of any express or implied condition of title or law which restricts the intended land use.*

The Commission may also compensate land occupants in good faith who necessarily do not hold title to the land. Compensation in this instance will be premised on: -

- *number of persons in actual occupation of the land for an uninterrupted period of six years immediately before the publication of the notice of intention to acquire the land;*
- *improvements done before the date of publication in the Gazette of the notice of intention to acquire the land;*
- *damage sustained or likely to be sustained by the occupants of the land during acquisition of the land injuriously affecting other property, whether movable or immovable or in any other manner affecting the person's actual earnings; and*

- *change of residence or place of business by the occupants as a result of the acquisition, reasonable payment of expenses will be determined by the Commission.*

- *any other criteria which the Commission may prescribe in Regulations in consultation with the Cabinet Secretary and county governments and with the approval of the National Assembly and the Senate.*



Leasehold land – Section 107B

For leasehold landowners, the factors to be considered when determining value of the land for compensation purposes, only apply where the Lessee has complied with the terms and conditions of the Lease. Where there is breach of said terms and conditions, the land automatically reverts to the national or county government as the case may be.

The factors are as follows: -

- *value of the land based on the unexpired term of the lease calculated on the basis of a land value index, (Land Value Index is an analytical representation showing the spatial distribution of land values in a given geographical area at a specific time);*
- *value of developments or improvements on the land and any other cost incurred on the basis of the terms and conditions of the Lease;*

Upon valuation, according to Section 112 of the Land Act, the Commission is required to conduct an inquiry as to the propriety and claims for compensation by persons interested in the land. For this part, the Commission will publish a notice in the Gazette for 15 days before the inquiry and ensure that every person with an interest in the land is notified.

Persons with interest to the land may make written representations, call witnesses and adduce evidence on the day of the inquiry.

Section 113 states that, after conducting the inquiry, the Commission shall prepare a written award specifying the award for each person and the award is the final and conclusive evidence of size of the land to be acquired, value and form of compensation payable.

Compensation under the Act may be in various forms such as allocation of alternative parcel of land of equivalent value and comparable geographical location and land use to the land compulsorily acquired, monetary payment either in lump sum or in instalments spread over a period of not more than one year, issuance of government bond, grant or transfer of development rights or equity shares in a government owned entity.

Thereafter, the Commission will notify each person of the award and offer of compensation via Notice of Award and make payment.

Land Regulations Regulation 29 - Payment of compensation

Subject to the above regulation, upon payment of compensation, depending on whether the whole or portion of the land was acquired, the land owner shall—

- *deliver the original title to the Commission, who shall prepare surrender documents to be signed by the proprietor and forwarded to the Registrar provided that delivery of the original title shall be done not later than fifteen (15) days from the date of payment of compensation; and*
- *the Registrar shall register the acquired parcel in favor of the acquiring authority and register the remaining parcel in the name of the proprietor as the case may be.*

However, if the land is deemed unfit for the purpose for which the acquisition was intended, the Commission shall notify the Registrar to remove the notice of intention to acquire on the register within seven days from the date of the notice.

Conclusion

The above is a brief summary of the procedure that every landowner whether freehold or leasehold must be conversant with, when it comes to compensation by the National Land Commission.

Disclaimer

This legal alert is for information purposes only and should not be interpreted as legal advice or opinion. If you have any queries, concerns or need clarification, please do not hesitate to contact info@r-madvocates.co.ke.

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