

# Real Estate Law

## ALERT

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INCORPORATING  
**KIETI LAW LLP, KENYA**

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### KENYA

#### Charting a course for public land reform through the Land (Amendment) Bill, 2022

Kenya has historically struggled with a major crisis in its public land tenure system. This crisis is known as "*land grabbing*" and is the illegal and irregular allocation of land meant for public purposes to private individuals and corporations. There are many contributors to land grabbing, the main being a legal contributor, that is, the country's lack of a system for the issuance of certificates of title in respect to public land and land set aside for a public purposes by land buying companies.



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KENYA

## Charting a course for public land reform through the Land (Amendment) Bill, 2022

Kenya has historically struggled with a major crisis in its public land tenure system. This crisis is known as “land grabbing” and is the illegal and irregular allocation of land meant for public purposes to private individuals and corporations. There are many contributors to land grabbing, the main being a legal contributor, that is, the country’s lack of a system for the issuance of certificates of title in respect to public land and land set aside for a public purposes by land buying companies.

The land grabbing crisis was recently highlighted in the Supreme Court decision in the case of *Dina Management Limited V County Government of Mombasa and Five Others* (Supreme Court Petition No. 8 (E010) of 2021). In the *Dina* case, the Supreme Court decided that land which was initially set aside for a public road and allotted to a former President of Kenya in 1989, and that was subsequently sold, was irregularly and illegally acquired and could not be disposed of.

Article 68 of the Constitution of Kenya, 2010 (Constitution) requires Parliament to enact legislation to enable the review of all grants or disposition of public land to establish their propriety or legality.

It is against this backdrop that the Land (Amendment) Bill, 2022 (Bill) was proposed to amend the Land Act, 2012 by creating a registration process for public land, which did not previously exist. Currently, land set aside for public use does not require a title document.

### Defining public land

The Bill further introduces a different definition of public land to the Constitution. The Constitution largely categorises public land according to its use, such as forests, roads, rivers, unalienated government land, etc. while the Bill distinguishes public land according to the manner in which it is acquired. As such, the Bill categorises public land to include land allocated to a public body or institution by the National Land Commission (allocated public land); and land set aside by persons or a land buying company under the Physical and Land Use Planning Act, 2019 for a public purpose upon a proposed development (surrendered public land).

The registration procedure proposed by the Bill is as follows:

1. Application for registration: The Bill now requires a public body or institution to apply to the registrar for registration of allocated public land.



KENYA

## Charting a course for public land reform through the Land (Amendment) Bill, 2022

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2. Registration: The registrar is required to register both surrendered public land and allocated public land.
3. Issuance of a certificate of title: Upon registration of surrendered public land and allocated public land, the registrar will issue a certificate of title in the name of;
  - the incorporated public entity, in the case of public land allocated to a public body;
  - the Cabinet Secretary to the National Treasury as a trustee in case of land allocated to an unincorporated public entity; or
  - the county government in case of land allocated to a county Government.

For further reading, you can access the Bill [here](#)

Although the Bill is still pending public participation and stakeholder feedback, its provisions should be harmonised with the registration process under the Land Registration Act, 2012 (LRA), which is the

procedural statute for registration of interests in land. The transitional provisions of the LRA require the registrar to register public land either in the name of the county or national Government. There is no requirement to register public land in the name of a public body or state organ. The Bill should also amend the provisions of the LRA to include registration of land in the name of an incorporated public body. Further, the LRA also envisages registration of the National Land Commission as the proprietor of public land. This should also be amended by the Bill.

The proposed amendments by the Bill, if passed, will be instrumental in ensuring that there is registration of public land, which will in turn enable a clear and absolute proof of public land, thereby eliminating the illegal allocation of such land to private individuals and corporations.

**Sammy Ndolo, Robert Gitonga, Effie Atieno, Sylvia Kamanga and Billy Oloo**



## OUR TEAM

For more information about our Real Estate Law practice and services in South Africa and Kenya, please contact:



**Muhammad Gattoo**  
Practice Head & Director:  
Real Estate Law  
T +27 (0)11 562 1174  
E [muhammad.gattoo@cdhlegal.com](mailto:muhammad.gattoo@cdhlegal.com)



**Sammy Ndolo**  
Managing Partner | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E [sammy.ndolo@cdhlegal.com](mailto:sammy.ndolo@cdhlegal.com)



**Bronwyn Brown**  
Director:  
Real Estate Law  
T +27 (0)11 562 1235  
E [bronwyn.brown@cdhlegal.com](mailto:bronwyn.brown@cdhlegal.com)



**Mike Collins**  
Director:  
Real Estate Law  
T +27 (0)21 481 6401  
E [mike.collins@cdhlegal.com](mailto:mike.collins@cdhlegal.com)



**Simone Franks**  
Director:  
Real Estate Law  
T +27 (0)21 670 7462  
E [simone.franks@cdhlegal.com](mailto:simone.franks@cdhlegal.com)



**Fatima Gattoo**  
Director:  
Real Estate Law  
T +27 (0)11 562 1236  
E [fatima.gattoo@cdhlegal.com](mailto:fatima.gattoo@cdhlegal.com)



**Simone Immelman**  
Director:  
Real Estate Law  
T +27 (0)21 405 6078  
E [simone.immelman@cdhlegal.com](mailto:simone.immelman@cdhlegal.com)



**Muriel Serfontein**  
Director:  
Real Estate Law  
T +27 (0)11 562 1237  
E [muriel.serfontein@cdhlegal.com](mailto:muriel.serfontein@cdhlegal.com)



**John Webber**  
Director:  
Real Estate Law  
T +27 (0)11 562 1444  
E [john.webber@cdhlegal.com](mailto:john.webber@cdhlegal.com)



**Alex de Wet**  
Director:  
Real Estate Law  
T +27 (0)11 562 1771  
E [alex.dewet@cdhlegal.com](mailto:alex.dewet@cdhlegal.com)



**Natasha Fletcher**  
Counsel:  
Real Estate Law  
T +27 (0)11 562 1263  
E [natasha.fletcher@cdhlegal.com](mailto:natasha.fletcher@cdhlegal.com)



**Samantha Kelly**  
Counsel:  
Real Estate Law  
T +27 (0)11 562 1160  
E [samantha.kelly@cdhlegal.com](mailto:samantha.kelly@cdhlegal.com)

## OUR TEAM

For more information about our Real Estate Law practice and services in South Africa and Kenya, please contact:



**Robert Kaniu Gitonga**

Senior Associate | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E robert.gitonga@cdhlegal.com



**Bridget Witts-Hewinson**

Senior Associate:  
Real Estate Law  
T +27 (0)21 481 6447  
E bridget.witts-hewinson@cdhlegal.com



**Lutfiyya Kara**

Senior Associate:  
Real Estate Law  
T +27 (0)11 562 1859  
E lutfiyya.kara@cdhlegal.com



**Sune Kruger**

Senior Associate:  
Real Estate Law  
T +27 (0)11 562 1540  
E sune.kruger@cdhlegal.com



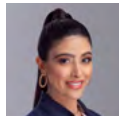
**Lulama Lobola**

Senior Associate:  
Real Estate Law  
T +27 (0)21 481 6443  
E lulama.lobola@cdhlegal.com



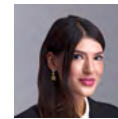
**Ceciley Oates**

Senior Associate:  
Real Estate Law  
T +27 (0)11 562 1239  
E ceciley.oates@cdhlegal.com



**Fatima Essa**

Associate:  
Real Estate Law  
T +27 (0)11 562 1754  
E fatima.essa@cdhlegal.com



**Zahra Karolia**

Associate:  
Real Estate Law  
T +27 (0)11 562 1701  
E zahra.karolia@cdhlegal.com



**Ebum Taigbenu**

Associate:  
Real Estate Law  
T +27 (0)11 562 1049  
E ebum.taigbenu@cdhlegal.com



**Muneerah Hercules**

Associate Designate:  
Real Estate Law  
T +27 (0)11 562 1579  
E muneerah.hercules@cdhlegal.com

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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**JOHANNESBURG**

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.  
Dx 154 Randburg and Dx 42 Johannesburg.  
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E [jhb@cdhlegal.com](mailto:jhb@cdhlegal.com)

**CAPE TOWN**

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.  
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E [ctn@cdhlegal.com](mailto:ctn@cdhlegal.com)

**NAIROBI**

Merchant Square, 3<sup>rd</sup> floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.  
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114  
E [cdhkenya@cdhlegal.com](mailto:cdhkenya@cdhlegal.com)

**STELLENBOSCH**

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.  
T +27 (0)21 481 6400 E [cdhstellenbosch@cdhlegal.com](mailto:cdhstellenbosch@cdhlegal.com)

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