

# Real Estate Law

## ALERT

14 NOVEMBER 2023



INCORPORATING  
KIETI LAW LLP, KENYA

## IN THIS ISSUE

### Your short-term lease may require ministerial consent

Section 3(d) of the Subdivision of Agricultural Land Act 70 of 1970 (Act) states that no lease shall be entered into without the consent of the Minister of Agriculture "in respect of a portion of agricultural land of which the period is:

1. 10 years or longer; or
2. is the natural life of the lessee or any other person mentioned in the lease or;
3. which is renewable from time to time at the will of the lessee, either by the continuation of the original lease or by entering into a new lease, indefinitely or for periods which together with the first period of the lease amount in all to not less than 10 years."



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## Your short-term lease may require ministerial consent

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The written consent from the Minister of Agriculture must be obtained **prior** to entering into such lease agreements. Long-term lease agreements concluded without the Minister of Agriculture's consent are invalid from the beginning.

The purpose of the Act is to prevent the division of agricultural land into small uneconomical portions.

The issue in *Hanekom and Another v Lombard – Appeal* (A33/2023) [2023] ZAWCHC 237 (7 September 2023) involved a written lease agreement that was entered into between the tenant (Hanekom) and the landlord (Lombard) in 2000 in terms of which the landlord let certain portions of a farm (which portions formed part of agricultural land as defined in the Act) to the tenant for an initial period of 9 years and 11 months with an option to renew the lease agreement for a further period of 9 years and 11 months at the instance of the

tenant (initial agreement). The total lease period for the initial agreement exceeded 10 years (initial period plus renewal period), in contravention of section 3(d) of the Act.

In 2004 the lease period was further extended when the landlord registered a mortgage bond in favour of the tenant as security for a loan made to the landlord by the tenant. A term of the mortgage bond was that the lease would be extended by a further period of 10 years after the initial agreement had expired.

The High Court found the lease agreement between the tenant and the landlord to be void in terms of section 3(d) of the Act as the lease period exceeded 10 years and the Minister of Agriculture's consent was not obtained.

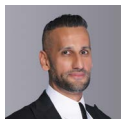
The tenants appealed to a full bench of the High Court with leave to the Supreme Court of Appeal. The full bench upheld the decision of the High Court and dismissed the appeal with costs.

The Lombard case reinforces the applicability of section 3(d) of the Act. Lease agreements concluded contrary to the Act run the risk of being declared void from the beginning. It is advisable to seek legal advice before entering into such lease agreements to avoid legal implications and financial constraints.

**Natasha Fletcher and Zahra Karolia**

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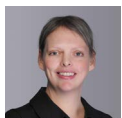
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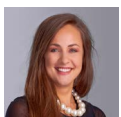
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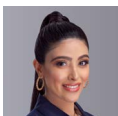
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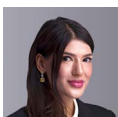
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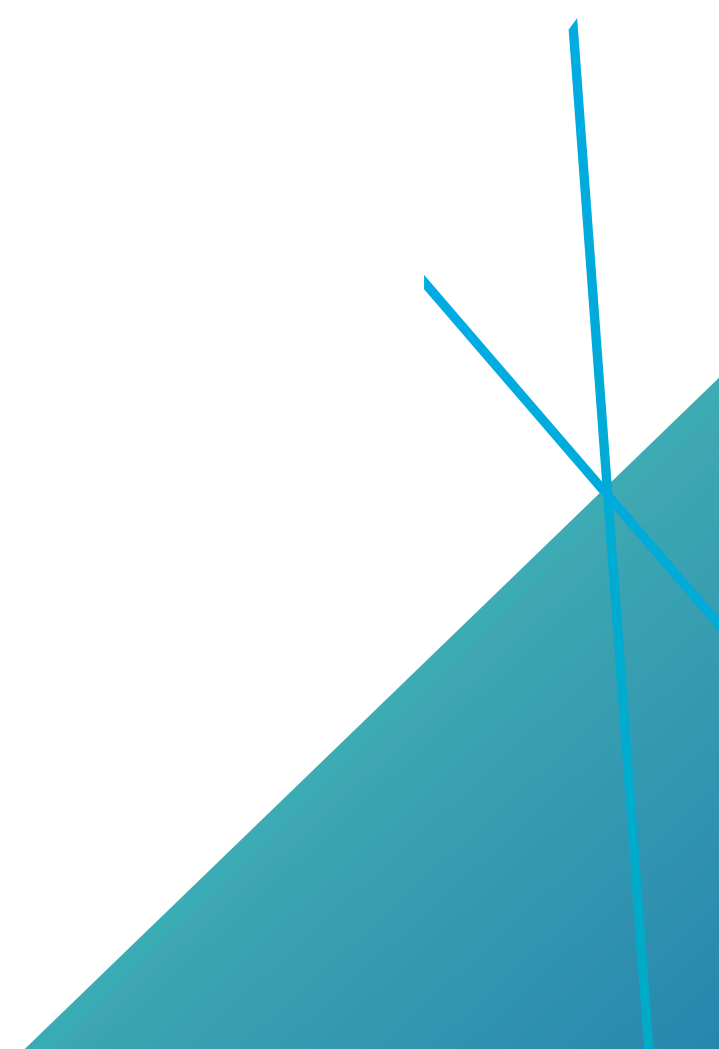
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